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THE SINGLE SOLDIER QUALITY OF LIFE INITIATIVE:

GREAT EXPECTATIONS OF PRIVACY

A Thesis  
Presented to  
The Judge Advocate General's School  
United States Army

The opinions and conclusions expressed herein are those of the author and do not necessarily represent the views of either The Judge Advocate General's School, the United States Army, or any other governmental agency.

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United States Army

43D JUDGE ADVOCATE OFFICER GRADUATE COURSE

April 1995

THE SINGLE SOLDIER QUALITY OF LIFE INITIATIVE:

GREAT EXPECTATIONS OF PRIVACY

by Major Jacqueline Scott

ABSTRACT: This thesis examines the Single Soldier Quality of Life Initiative (SSQOL) program existing within U.S. Army, Europe to determine how the program affects the soldier's Fourth Amendment expectations of privacy in the barracks. This thesis posits that SSQOL's new privileges create greater expectations of privacy for soldiers living in the barracks. Not only does SSQOL adversely affect the commander's authority to regulate conduct within the barracks, but the program also reduces his authority to inspect and search his unit. SSQOL has the potential to change the barracks to a Fourth Amendment "home," protecting soldiers from warrantless apprehensions in the barracks. Because commanders' interests in maintaining good order and discipline outweigh single soldiers' privacy interests in the barracks, this thesis proposes changes to enhance command authority in the barracks. These changes include modifications to the SSQOL program and amendments to the Military Rules of Evidence and Rules for Courts-Martial.

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THE SINGLE SOLDIER QUALITY OF LIFE INITIATIVE:  
GREAT EXPECTATIONS OF PRIVACY

Major Jacqueline Scott\*

I. Introduction

"[F]or all I know in the days of this all-volunteer force, military commanders have indeed transferred ownership of the barracks to the troops."<sup>1</sup>

Throughout most of our nation's history, the bulk of our fighting force has consisted of single service members. However, since the all-volunteer force began in the early 1970s, the percentage of married service members has escalated, making family-oriented quality of life programs increasingly important

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<sup>1</sup> United States v. Moore, 23 M.J. 295, 300 (C.M.A. 1987), (Cox, J., concurring).

to entice members to reenlist and stay in the career force.

In recent years, single soldiers have expressed a growing frustration that their married counterparts were getting a "better deal" and that singles were being discriminated against. Numerous family member programs funded by the services serve as but one example of how "military families are special."

Responding to these concerns, U.S. Army, Europe (USAREUR) began a program called the Single Soldier Quality of Life Initiative (SSQOL) in 1991. One of the program's stated goals is the equal treatment of soldiers without regard to their marital status or living location.<sup>2</sup> Soldiers have eagerly embraced the program with its new freedoms for barracks occupants.

However, a closer examination of the program reveals potential legal issues that undermine the commander's control over his soldiers and barracks. The purpose of this thesis is to examine the SSQOL program to determine whether it is changing privacy interests in the barracks. Critical to understanding this thesis is a detailed understanding of SSQOL -- how it developed, its stated goals and initiatives, and the current status of compliance within USAREUR. Next, I will examine the

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<sup>2</sup> Memorandum, U.S. Army, Europe, AEAGA-MW, subject: Single Soldier Quality of Life (8 Oct. 1991) [hereinafter Original SSQOL Memo].

problems with SSQOL. Specifically, I will analyze how SSQOL limits the commander's authority to regulate conduct in the barracks as well as the commander's authority to conduct inspections and authorize searches in the barracks. Next, I will examine the historical development of the right to privacy under the Fourth Amendment, focusing on the differing expectations of privacy based on where the soldier lives. After analyzing the privacy interests granted under SSQOL, I will discuss how these privileges create a greater expectation of privacy in the barracks. To minimize the soldier's privacy rights in the barracks, I will propose changes necessary to enhance the commander's authority to maintain good order, discipline, and readiness within the unit.

## II. The Single Soldier Quality of Life Initiative (SSQOL)

### A. *Background and Genesis of the SSQOL Program*

[A]s . . . a single person living in the barracks, constantly I'm made to feel as if I'm living in a cage, as if I and everything I own exist merely as a display, as if I'm an animal in the zoo, as if there's a sign on my door that says: "Here Resides the Species, Single Enlisted Man: Observe Him in His Native Habitat."<sup>3</sup>

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<sup>3</sup> Jay Blucher, *Life in the Times: Singled Out*, ARMY TIMES, Mar. 7, 1988, at 65.

As the Year of the Army Family drew to a close in 1984, the Army expanded the scope of the Army Family beyond the traditional concept of parents and children to include single soldiers.<sup>4</sup> However, not until 1988 when the *Army Times* published a series of letters and articles on single soldier issues did the plight of single soldiers receive meaningful attention from the Army's senior leadership. The article was based on input from more than 130 letters responding to a general inquiry of how single service members perceived they were being treated in the military. Among the many issues raised were: barracks life, extra duty and unannounced duty (commonly called "hey, you" details), perceived unfair treatment in assignment policies (particularly repeated short tours or overseas), and inequitable household goods weight allowances.<sup>5</sup>

As a result, the Army Family and Community Support Center began in July 1988 to develop an action plan which would help ensure that single soldiers and families were treated equally. An outgrowth of that tasking and the Family Action Plan Planning Symposium of 1988 was the establishment of the Better Opportunities for Single Soldiers (BOSS) program in June 1989. The purpose of this world-wide program, originally targeted at

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<sup>4</sup> DEP'T OF ARMY, CIRCULAR 608-94-1, THE ARMY FAMILY ACTION PLAN XI, para. B-2f (31 Jan. 1994).

<sup>5</sup> Blucher, *supra* note 3, at 70.

recreational opportunities and programming for singles, was to provide a conduit for input and feedback between the single or unaccompanied soldier, the installation staff, and the local command. In October 1990, the Chief of Staff of the Army directed that the BOSS program's scope be expanded to include every aspect of the single soldier's life.<sup>6</sup>

During USAREUR's fall 1990 and spring 1991 Family Force Forums, single soldier work groups voiced concerns similar to those reported in the *Army Times*: single soldiers were treated differently from married soldiers and not like adults; they lived in crowded, poorly-maintained barracks; they had no privacy due in large part to a myriad of daytime, late night, and weekend walk-through inspections; and their Air Force peers' quality of life was better than theirs.<sup>7</sup>

Based on these comments, USAREUR's commander-in-chief (CINCUSAREUR), General Crosbie E. Saint, formed a task force to examine the quality of life of single soldiers and airmen stationed in Europe. After touring facilities and talking to soldiers, airmen, and first-line and company-level leaders at eight Army installations and five air force bases, the task force

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<sup>6</sup> Lieutenant Colonel Theodore C. Fox III, *The Single Soldier Dilemma 12* (1992) (unpublished paper, U.S. Army War College Military Studies Program).

<sup>7</sup> Information Booklet, U.S. Army Europe, AEAGA-MW, subject: *Telling the USAREUR Story (Single Soldier)*, 1 (23 Nov. 1992).

substantiated the single soldier work groups' complaints.<sup>8</sup>

The task force found that single soldiers lived in extremely crowded conditions, exacerbated by company administrative functions as well as senior noncommissioned officers occupying billets rooms. Barracks maintenance was a low priority at most installations. Soldiers would get married just to move out of the barracks. Other soldiers preferred to sleep in their cars on the weekends to evade no-notice "hey, you" details. Soldiers went drinking off post and then drove back to the barracks because policies forbade consumption and storage of alcohol in barracks; no such policies applied to married soldiers on or off post. Visitation policies varied widely, but most restricted visits to short durations and nearly all required doors open while visiting the opposite sex in their barracks room (commonly called an "open-door" policy). Married soldiers received preferential treatment over their single counterparts. For example, an NCO admitted recommending a soldier for a promotion board ahead of another soldier solely because the first soldier was married and needed the additional money the promotion would bring: After contrasting life in the Air Force dormitories with that in the Army barracks, the task force concluded that Army soldiers' quality of life was indeed worse than their single Air Force counterparts in Europe.<sup>9</sup>

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<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.*

As a result, the task force presented CINCUSAREUR with recommendations to ameliorate single soldier living conditions.<sup>10</sup> In October 1991, General Saint signed a memorandum consisting of 72 different proposals designed to enhance single soldier quality of life. The cover memorandum promulgated, "[E]xcept where there is a statutory basis, policies and regulations in USAREUR and leaders' actions will not distinguish between married or single soldiers."<sup>11</sup> Regarding life in the barracks, the policy stated, "The room to which a soldier is assigned is his/her home. As such operation and management of the barracks must allow the soldier to feel at home."<sup>12</sup> This was the beginning of a fundamental change in the concept of living in the barracks.

This original SSQOL memorandum did not mandate compliance by subordinate commands. Based upon comments from the field, the new CINCUSAREUR, General David M. Maddox, decided to change many of his predecessor's proposals into policy, signing a policy memorandum in February 1993. This memorandum categorized its quality of life initiatives into policy ("things that must be accomplished"), proposals ("things that must be accomplished when possible"), and actions to be taken by the USAREUR staff to

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<sup>10</sup> Information Paper, U.S. Army Europe, AEAGA-MW, subject: Single Soldier Quality of Life 1 (1 Feb. 1994).

<sup>11</sup> Original SSQOL Memo, *supra* note 2, at 1.

<sup>12</sup> *Id.* at 2.

emphasize single soldier issues. The policy statement regarding soldier treatment was more artfully drafted to read: "Commanders will treat soldiers equally regardless of marital status, except as regulated by USAREUR policy."<sup>13</sup> This subtle revision excepted certain standing USAREUR policies which applied solely to barracks occupants and not residents of on- or off-post quarters (such as prohibition on storage of privately owned weapons).

The most noticeable changes in the new SSQOL included the new term "soldier quarters" (SQ) replacing the word "barracks" and the requirement to assign full-time SQ managers.<sup>14</sup> Other than mandating immediate compliance with the program, the new SSQOL policy incorporated virtually all of the original program's ideas. A command briefing on SSQOL emphasized, "Single Soldier Initiatives fundamentally changes soldier quarters life by giving single soldiers the same privacy considerations as married soldiers."<sup>15</sup>

General Maddox renewed the SSQOL policy on 1 April 1994, maintaining in essence the same policy and proposals. The

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<sup>13</sup> Memorandum, U.S. Army Europe, AEAGA-M, subject: Single Soldier Quality of Life Policy 1 (4 Feb. 1993) [hereinafter SSQOL Policy Memo].

<sup>14</sup> *Id.* at 2. For purposes of clarity in this thesis, the term "barracks" will be used to distinguish single soldier housing from family housing on post.

<sup>15</sup> Briefing Text, U.S. Army Europe, AEAGA-MW, entitled USAREUR's Single Soldier Quality of Life Initiatives 1 (undated) [hereinafter Briefing Text].

concept of the full-time soldier quarters manager was modified significantly by requiring centralized soldier quarters management, with the stated USAREUR goal to centralize all soldier quarters (married and single soldier) under the local housing office. The program also added a requirement that all personnel (married and single) be briefed on SSQOL policy and all soldiers at battalion level and below watch a videotape entitled "CINCUSAREUR on Single Soldier Initiatives." Also, the new memorandum specified that no pets (other than fish) were allowed in soldier quarters.<sup>16</sup> Although USAREUR changed command in December 1994, the 1 April 1994 SSQOL memorandum currently remains in effect within USAREUR.

#### *B. Components of the SSQOL Program*

"The major challenge to senior leadership is changing young leaders' treatment of single soldiers and implanting the idea that a barracks room is a soldier's home."<sup>17</sup>

Changing the concept of barracks takes more than simply changing the name. To that end, SSQOL changed the definition of barracks life as it presently exists in the rest of the Army. The foundation of the policy is to treat all soldiers as

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<sup>16</sup> SSQOL Policy Memo, *supra* note 13, at 1.

<sup>17</sup> Issue Paper, U.S. Army Europe, AEAGA-MW, subject: USAREUR Single Soldier Quality of Life, 1 (24 Nov. 1992) [hereinafter Issue Paper].

responsible adults without regard to their marital status and to hold them accountable to established standards.<sup>18</sup> To many "old soldiers," some of the ideas contained in SSQOL to promote equal treatment were startling.

1. *Equitable Treatment*--The current SSQOL contains a section entitled "Policy," divided into the categories of "Soldier Treatment" and "Soldier Quarters." As discussed above, commanders are required to treat soldiers equally, regardless of marital status, except where regulated by USAREUR policy.<sup>19</sup> One example of equal treatment is to replace "hey, you" details with an "on call" duty roster listing all soldiers (married, single, on or off post) eligible for unforeseen extra duties. Commanders must enforce "Prime Time" for single as well as married soldiers.<sup>20</sup> Subordinate commands are required to establish written procedures to implement SSQOL at battalion level and

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<sup>18</sup> Briefing Text, *supra* note 15, at 1.

<sup>19</sup> SSQOL Policy Memo, *supra* note 13, at 1. In a telephone interview with MAJ Anne Sidrey, SSQOL project officer, Community and Family Support Division, Office of the Deputy Chief of Staff for Personnel, USAREUR, she said that the policy memo's reference to "equal treatment" is more accurately characterized as "fair treatment based on duty performance and rank."

<sup>20</sup> U.S. ARMY EUROPE, REG. 350-1, USAREUR TRAINING DIRECTIVE, para. 1-25b (18 Feb. 1993) establishes the concept of "Prime Time," that is, unless mission requirements dictate otherwise (as approved by an O-6 commander or higher), all soldiers are to be released from their places of duty beginning at 1600 hours every Thursday. One of the stated purposes of Prime Time is for soldiers to spend time with their families. In some units, married soldiers went home during Prime Time while the single soldiers continued to work.

below. At the core of the policy is the prohibition against local commanders issuing "restrictions on soldiers simply because they live in soldier quarters."<sup>21</sup> Examples of forbidden restrictions are those against storing, limiting amounts, or consuming certain alcoholic beverages (such as hard liquor) in barracks, owning a privately-owned vehicle, or limiting room decorations or wall locker arrangements.

2. *Soldier Quarters Management*--The section on "Soldier Quarters" mandates a full-time soldier quarters (SQ) manager and centralized management either under the base support battalion (BSB) housing office or at the tactical command at battalion or higher level.<sup>22</sup> The responsibilities of the SQ manager are similar to those of a Family Housing Office: assign and terminate quarters, conduct check-in and check-out inspections, maintain accountability of SQ furniture, follow up on work orders, maintain key control, and respond to chain of command concerns.

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<sup>21</sup> Briefing Text, *supra* note 15, at 2.

<sup>22</sup> USAREUR REG. 10-20, ORGANIZATIONS AND FUNCTIONS, USAREUR BASE OPERATIONS (DRAFT), (undated) established the concept of the "Community Command Plan" in USAREUR. Formerly, administrative functions were managed by the "Community Commander" under the supervision of the Senior Tactical Commander. Under the Community Command Plan, brigade-sized units called Area Support Groups (ASG) are responsible for administrative functions for community areas. Area Support Groups are further divided into Base Support Battalions (BSB), which are tied more closely to each major military community. Base Support Battalions may be further subdivided into Area Support Teams (AST) to support small installations within a larger community.

In addition to the SQ manager, the policy requires appointment of area, building, and floor coordinators when the SQ are under control of the housing office. If managed by the local command, then commanders will appoint these coordinators. Building and floor coordinators must be SQ occupants who serve on an additional duty basis. The concept of area/building/floor coordinators parallel those responsibilities in family housing. Area coordinators periodically inspect the common areas of buildings to ensure "a high quality of life is being maintained," and report violators of SQ policy to the chain of command.<sup>23</sup> Working along with the area coordinators to solve problems, building coordinators, normally the most senior-ranking occupants, ensure SQ are "properly cared for and remain high-quality places to live."<sup>24</sup> Building and floor coordinators resolve conflicts among SQ occupants, report violations of standards to area coordinators or the chain of command, develop duty rosters for cleaning common areas, and supervise cleaning details.<sup>25</sup>

Another fundamental change brought by centralized management is the movement away from maintaining "unit integrity" by rooms

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<sup>23</sup> U.S. ARMY EUROPE, REG. 210-50, HOUSING MANAGEMENT, para. 118e (25 Aug. 1992) (C4, 7 Feb. 1995) [hereinafter USAREUR Reg. 210-50].

<sup>24</sup> SSQOL Policy Memo, *supra* note 13, at 3.

<sup>25</sup> USAREUR Reg. 210-50, *supra* note 23, para. 118f.

and floors within barracks. The drawdown in USAREUR resulted in some installations having unoccupied buildings. General Maddox stated in his videotape that he saw no need to keep soldiers crowded up in rooms in order to maintain squad, platoon, or company unit integrity. A recent change to the USAREUR housing regulation implements CINCUSAREUR's intent, specifying, "Unit personnel should be housed in the same building when possible. The first priority, however, is effective use of available space to meet the Commander in Chief, USAREUR, single soldier housing standard . . . . Unit integrity is a second priority."<sup>26</sup> Further hindering unit integrity is that smoking preference of the soldiers must be taken into account when making roommate assignments. If a smoker and nonsmoker must room together, then their room must be designated nonsmoking.<sup>27</sup>

3. *No CQ Allowed*--Although similar to the those of the traditional Charge of Quarters (CQ), neither the SQ manager nor the building/floor coordinators serves that function under SSQOL. In fact, the CQ is eliminated under SSQOL "except where a valid operational requirement exists" upon approval granted by the senior tactical commander (generally, an O-6 commander).<sup>28</sup> No longer is there a constant command presence to supervise barracks residents after duty hours or to wake them up in the morning for

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<sup>26</sup> USAREUR Reg. 210-50, *supra* note 23, para. 117b.

<sup>27</sup> SSQOL Policy Memo, *supra* note 13, at 3.

<sup>28</sup> *Id.* at 6.

first formation.

4. *Visitation Policy*--Other drastic changes were made to visitation policies. No sign-in/sign-out logs are required, nor are guests restricted to certain hours or to the day room. No longer is there an "open door" policy for visits between members of the opposite sex. Only two controls remain on visitation: first, nonmilitary visitors under age 18 must be accompanied by a parent or guardian, and second, no overnight visitors are permitted without permission of the local commander.<sup>29</sup>

5. *Room Decoration*--Under SSQOL, soldiers are permitted to paint and decorate their rooms the way they wish "provided decorations are not offensive and roommates agree on the decor."<sup>30</sup> Not only can they hang pictures and rearrange furniture, soldiers can either obtain free paint from the Directorate of Engineering and Housing (DEH) or buy different color paint as long as they return the room to DEH standards before clearing. In addition to buying their own bedspreads, linens or rugs, soldiers can augment government-issued furniture with their own purchases. As a direct benefit of the drawdown in USAREUR, the Defense Reutilization and Marketing Office schedules many excess furniture sales where soldiers can buy items at bargain prices. No more "dress right, dress" wall locker layouts

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 2.

are allowed. Gone are the days of the green wool blanket stretched tightly enough over a bunk bed to make a quarter bounce. Even General Maddox stated in his videotape, "A green Army blanket does not somehow promote discipline." According to General Maddox, the simple freedom of allowing soldiers to decorate their own rooms enhances their pride.

6. *Inspections*--Along with elimination of the CQ, perhaps the biggest change under SSQOL is the area of inspections. The traditional concept of the squad leader inspecting his soldiers' rooms every day is a thing of the past. Stating "SSQOL initiatives enhance morale by allowing soldiers greater privacy and wider latitude in what they can do in their quarters," the policy requires that the chain of command "use good judgment in conducting inspections."<sup>31</sup> For those who need more definite guidance, the policy specifies that room inspections will be conducted "only to the extent needed to ensure occupants maintain neatness, cleanliness, health, safety, and security standards and do not infringe on the rights of other occupants."<sup>32</sup> Soldiers who do not meet these standards may be inspected more frequently until standards are achieved. Although security checks of common areas are allowed, commanders are cautioned not to conduct walk-through room inspections late at night or on weekends, "except

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<sup>31</sup> *Id.* at 4.

<sup>32</sup> *Id.*

under special conditions that create a need to do so."<sup>33</sup> To minimize intrusions even further, the policy tells commanders not to conduct personal military clothing inspections or "TA-50 layout" inspections within soldiers' rooms, and preferably not even within the barracks.<sup>34</sup>

To provide guidelines to soldiers, commanders are required to establish a written policy defining barracks occupant responsibilities in rooms and in common areas, specifying standards of cleanliness. Each soldier must receive a copy of the policy when signing for a room.<sup>35</sup> Regarding common areas such as central latrines, lounges, kitchenettes, and hallways, occupants are permitted to contract out for routine cleaning services, although no one may be forced to participate in such an arrangement.<sup>36</sup> Imagine soldiers paying someone else to have a "GI party."

7. *More Private Living Space*--The single soldier housing standard limits occupants to no more than two enlisted soldiers (corporals/specialists and below) or one junior NCO (staff sergeant or sergeant) per room with private or semi-private bathrooms. In buildings with central bathrooms, the policy is

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 3.

<sup>36</sup> USAREUR Reg. 210-50, *supra* note 23, para. 118f(5).

two enlisted soldiers or one junior NCO per room "when enough space exists;" however, enlisted soldiers must receive at least 110 net square feet of living space each and junior NCOs must receive at least 220 net square feet of living space each.<sup>37</sup> All available SQ space must be used to increase space and personal privacy. Senior noncommissioned officers (sergeants first class and above) may not be housed in SQ at all, but in senior enlisted quarters or private rental housing.<sup>38</sup>

To maximize billeting space for soldier rooms, all administrative and logistical operations, (such as offices, orderly rooms, and supply/storage areas) except for linen closets, must be moved out of soldier quarters. If moving administrative functions completely out of the SQ is not feasible, then those activities must be relocated in a basement or attic with its entrance separate from the SQ. Another reason for moving these functions out is privacy: "to keep SQ occupants from being intruded on by unit administrative and logistic personnel."<sup>39</sup>

8. *Amenities*--In addition to providing more space and privacy, SSQOL requires commanders to make major physical improvements to soldier quarters. One of the task force's

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<sup>37</sup> SSQOL Policy Memo, *supra* note 13, at 3.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 5.

findings was that barracks occupants, particularly those who performed shift work, did not have access to kitchen facilities when the dining facility was closed.<sup>40</sup> To remedy this problem, soldiers are now allowed to have their own microwave ovens in their rooms if enough electrical power exists. Also, renovated SQs must include at least one kitchenette (containing at a minimum, a four-burner stovetop, sink, storage cabinets, microwave oven, and full-size refrigerator) and one ice machine per building, to be paid for by the Area Support Group's Operation and Maintenance, Army (OMA) funds. Where possible, commanders must establish laundry rooms with a commercial-size washer and dryer for every 10 soldiers.<sup>41</sup>

To enhance recreational opportunities for barracks occupants, commanders are directed to improve and maintain game rooms and separate them from television/reading rooms without taking up billeting space. If a structurally sound location exists, a weight room will be established in the SQ.<sup>42</sup> Official military telephones will be installed on each floor of the SQ for local use, and long-distance telephone service (such as AT&T) if host nation cable pairs are available. Soldiers are allowed to contract with the local host-nation telephone company for a private telephone line. Where cable television service is

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<sup>40</sup> Briefing Text, *supra* note 15, at 3.

<sup>41</sup> SSQOL Policy Memo, *supra* note 13, at 6.

<sup>42</sup> *Id.* at 5.

available, soldiers desiring individual connections are responsible for the cost. Other SQ improvement measures designated as "proposals" suggests providing SQ areas with bicycle racks, picnic shelters, grills and sports and exercise equipment. Where possible, separate personal storage areas should be provided so that soldiers can keep TA-50 and other items out of their rooms. As a part of renovation, commanders will consider providing modular room furnishings along with coordinated room furnishing sets (drapes, couches, chairs, carpet) for occupants.<sup>43</sup>

9. *Feedback and Training*--Base support battalion commanders are required to establish a Soldier Quarters Advisory Council (SQAC). Comprised of the commanders and command sergeants major of the major tactical units and the base support battalion commander, the housing manager, DEH representative, and a cross-section of area, building, and floor coordinators and SQ occupants, the SQAC advises commanders and occupants on single soldier policy in SQs, develops long and short range plans for SQ improvements, and identifies problems and makes recommendations for workable solutions. Commanders will ensure single soldier issues are addressed at town hall meetings and that a fair representation of single soldiers attends the USAREUR Family Force Forum and Army Family Action Plan Forum.<sup>44</sup>

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<sup>43</sup> *Id.* at 6.

<sup>44</sup> *Id.* at 3.

To ensure all personnel understand SSQOL, leaders' seminars at base support battalions and tactical units are required to educate leaders on single soldier issues. The USAREUR staff was tasked to develop single soldier programs of instruction for commanders courses and to incorporate training on SSQOL policy into the program of instruction at the school of standards for all newly-arrived personnel, staff sergeant and below.<sup>45</sup>

Responses from single soldiers have been overwhelmingly positive. Some soldiers dread returning to CONUS, even though many of the CONUS barracks are larger and nicer, because they fear not being treated like adults. In 1993, USAREUR shared information on SSQOL initiatives with Fort Campbell, Kentucky, Fort Ord, California, and Fort Lewis, Washington.<sup>46</sup> A recent Department of the Army Inspector General (IG) visit to locations throughout USAREUR examined SSQOL as an item of interest.

#### *C. Findings of USAREUR IG SSQOL Inspections*

1. *1993 Inspection*--The USAREUR IG conducted the first major inspection on SSQOL in late 1993 to evaluate the progress of implementation of the February 1993 SSQOL program. Lasting six weeks, the no-notice inspection examined 23 battalion-sized

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<sup>45</sup> *Id.* at 7.

<sup>46</sup> Briefing Text, *supra* note 15, at 1.

units in Germany, Italy, Belgium, and the Netherlands. One fundamental problem identified was that soldiers and leaders did not fully understand SSQOL, leading to misunderstandings of the policy in key areas such as NCOs' authority to conduct room inspections. Despite the program's goal, single soldiers were still not being treated equally to their married counterparts, pulling "hey, you" details, missing Prime Time, and receiving frequent room inspections. Units had not developed special "on-call" duty rosters. With living standards dictated by the chain of command, soldiers were afforded little opportunity to voice their opinions. The USAREUR IG found an abundance of confusion on how the chain of command should conduct inspections in soldier quarters. Also, the USAREUR IG discovered a substantial number of opposite sex visitors spending the night in soldier quarters, despite the "no overnight" policy. Very few units met the requirement of full service kitchens, game rooms, and day rooms.<sup>47</sup>

2. *1994 Followup Inspection*--Nearly one year later, the USAREUR IG completed a followup inspection on SSQOL. The inspection team visited ten battalion-sized units, located within each Area Support Group in USAREUR, including Belgium and Italy. A new component of this inspection was an unannounced walkthrough of SQs at night for a first-hand look at how soldiers really

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<sup>47</sup> Inspection Report, USAREUR Inspector General, subject: Special Inspection of Single Soldier Quality of Life (16 Aug.-24 Sep. 1993) [hereinafter USAREUR IG Inspection].

lived when off duty. The IG's overall finding was that the status of SSQOL implementation within USAREUR had progressed significantly.<sup>48</sup> The initiatives which concerned commanders the most were: room inspection policy, the role of the Soldier Quarters Advisory Council, and the overnight visitation policy. The IG also found confusion existed in the field on the leadership's authority to take away some of the SSQOL privileges from soldiers who failed to comply with portions of the policy.<sup>49</sup>

### III. Legal Problems With the SSQOL Program

#### A. *Limits on the Commander's Authority to Regulate Conduct*

I don't care what kind of man you give me, if I have him long enough I'll make him afraid. Every time there's what you call an Army injustice, the enlisted man involved is confirmed a little more in the idea of his own inferiority . . . . The Army functions best when you're frightened of the man above you and contemptuous of your subordinates.<sup>50</sup>

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<sup>48</sup> USAREUR and 7th Army Inspector General Bulletin, Issue Number 34, 1st Quarter FY 1995, 4.

<sup>49</sup> Inspection Report, USAREUR Inspector General, subject: Followup Special Inspection, Single Soldier Quality of Life (18 Jul.-17 Aug. 1994) [hereinafter USAREUR IG Followup Inspection].

<sup>50</sup> NORMAN MAILER, THE NAKED AND THE DEAD 175-76 (1948).

Charged with the responsibility to "make the program work," USAREUR commanders were told to quit fighting SSQOL and go ahead and implement it. Brigade commanders and other soldiers old enough to remember the days when they walked through the barracks on pay-day weekends as Staff Duty Officer along with the Charge of Quarters and a baseball bat were loath to abandon a constant command presence in the barracks. One of the biggest problems General Maddox had in implementing SSQOL was convincing his subordinate commanders and leaders that the program would work, undoubtedly the reason for the emphasis on SSQOL training mandated in the 1 April 1994 policy memorandum.

Although commanders supported the idea in theory of improving single soldiers' barracks, many feared that too many freedoms were being allowed too soon. Under the original SSQOL (when the initiatives were proposals), commanders -- notably in Infantry, Armor, and Cavalry units -- contended that the initiatives undermined discipline and the warfighting spirit of their soldiers.<sup>51</sup> A USAREUR press release during that same timeframe began:

The U.S. Army Europe's Single Soldier Quality of Life program was not designed to reduce discipline in the barracks, said USAREUR's Commander in Chief. "In fact, the program was designed to improve discipline by

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<sup>51</sup> Issue Paper, *supra* note 17, at 1.

putting more of the burden of discipline on individual soldiers. . . . Self-discipline is the best kind of discipline we can have."<sup>52</sup>

However, commanders hesitated to grant barracks dwellers the same privileges that soldiers in family housing had enjoyed for years. SSQOL limits the commander's control over the barracks by restricting his authority to regulate alcohol, eliminating the Charge of Quarters (CQ), and lifting visitation policies. The resulting lack of control over these historically regulated areas leads to indiscipline within the barracks and a consequent rise in misconduct, portending legal concerns.

1. *No Alcohol Restrictions*--"The warrior's historic right to the pleasures and solace of alcohol continues, nevertheless, to be respected under military law."<sup>53</sup> Recognizing the traditional soldier pastime of drinking to excess, commanders have historically controlled or limited this activity. So commonplace were prohibitions on alcohol consumption in the barracks that they were an institution. "Local regulations universally ban the consumption of alcoholic beverages in

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<sup>52</sup> Message, Headquarters, U.S. Army Europe, AEAPA-CI, subject: Command Information Release 92-329 -- CINC Says Single Soldier Program Improves Discipline (031700Z Nov 92).

<sup>53</sup> Lieutenant Colonel Arthur A. Murphy, *The Soldier's Right to a Private Life*, 24 MIL L. REV. 97, 121 (1964).

barracks assigned to enlisted personnel."<sup>54</sup>

Commanders saw no need to allow soldiers to drink in the barracks. Soldiers of legal age could go to on-post facilities such as the enlisted club or off post to local establishments. The unstated purpose behind this rationale was to keep underage soldiers from imbibing and to keep instances of drunken, disorderly conduct from damaging government property or injuring other soldiers within the barracks. The only problem with this reasoning is that soldiers would still have rowdy drinking sprees; they would just occur off post instead of on post where they could be more closely guarded and controlled.

In the early 1970s, strict rules on alcohol were liberalized, even to the point of allowing beer-vending machines in the barracks. With discipline problems rampant in many units during those turbulent years, the experiment failed.<sup>55</sup> In more recent times, many commanders issued policy letters allowing soldiers to possess small quantities of beer and wine in the barracks, but steadfastly forbade the possession of hard liquor, even if the amount was within the soldier's ration card allotment.

When SSQOL was in the draft stages before its inception in

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<sup>54</sup> *Id.*

<sup>55</sup> Briefing Text, *supra* note 15, at 3.

1991, the USAREUR Office of the Judge Advocate (OJA) commented upon the removal of alcohol restrictions in the barracks, calling it "questionable as a matter of policy":

Restrictions on the amount and type of alcohol soldiers possess in the barracks would be eliminated. The reasoning behind this proposal is that it is unfair to impose such rules on single soldiers residing in the barracks, while not imposing them on other soldiers. Statistically, single soldiers living in barracks are more likely to engage in alcohol related misconduct than others. It is therefore reasonable to differentiate between soldiers who reside in the barracks and those who do not.<sup>56</sup>

Nevertheless, SSQOL abolished all limitations on possession or consumption of alcohol in the barracks. By the end of Fiscal Year 1992, the USAREUR Office of the Provost Marshal reported that the expected increase in barracks incidents since the change in policy had not materialized.<sup>57</sup> However, no followup studies have tracked these trends. The most recent USAREUR IG inspection found one hundred percent compliance with the lifting of the alcohol restrictions and no recommendations for any change in

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<sup>56</sup> Comment, Office of the Judge Advocate, AEAJA-AL, subject: Single Soldier Policy, para. 4c (21 Jul. 1991) [hereinafter OJA Comment].

<sup>57</sup> Briefing Text, *supra* note 15, at 12.

policy.<sup>58</sup>

2. *Lack of Command Presence Without a CQ*--"The role of Charge of Quarters is taken pretty seriously by the Army."<sup>59</sup> Historically, the CQ has served as an extension of the commander after duty hours. Traditional CQ duties include quelling disturbances among barracks occupants, maintaining noise levels (loud televisions or stereos), monitoring visitors by signing them in and out, keeping room keys, supervising extra duty details, and accounting for common area (day room) furnishings. CQs are also the usual strong-arm for the "hey, you" details, grabbing available barracks residents to respond to unforeseen taskings, such as an angry complaint about the state of police call outside the barracks.

Elimination of the CQ, to many commanders, seemed like an abrogation of the responsibility to maintain security and discipline in the barracks. Without a CQ, one obvious concern is the lack of security caused by no feasible way to maintain day-to-day property accountability of day room and common use recreational equipment. The USAREUR IG found that nearly all units struggled with how to secure equipment in common areas (high-dollar items such as televisions, video cassette players or

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<sup>58</sup> USAREUR IG Followup Inspection, *supra* note 49, at 18.

<sup>59</sup> ROBERT S. RIVKIN, GI RIGHTS AND ARMY JUSTICE 51 (1970).

stereos) to prevent vandalism and theft.<sup>60</sup> Another concern is how to preserve cleanliness and order within the barracks and how to police soldiers' behavior. Recognizing these concerns, a 1993 command briefing on SSQOL admitted:

In many cases, elimination may not make sense. . . .

The decision to implement CQs belongs to the unit chain of command. In cases where discipline and order are a problem in unit billets, temporary CQs or guards is an effective option. Typically, a short dose of the billet guard roster will curb billet discipline problems. However, decisions must be based on local commander assessment and approved by senior tactical commander.<sup>61</sup>

By the time of the 1994 USAREUR IG inspection, all inspected units had discontinued their CQs. However, some unit commanders experiencing discipline problems in the barracks reinstated CQs on a temporary basis to ensure responsible behavior.<sup>62</sup>

Even some barracks residents would prefer having a CQ. During IG sensing sessions, some barracks occupants expressed concerns over potential safety or security problems. With no CQ

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<sup>60</sup> USAREUR IG Followup Inspection, *supra* note 49, at 37.

<sup>61</sup> Briefing Text, *supra* note 15, at 9.

<sup>62</sup> USAREUR IG Followup Inspection, *supra* note 49, at 47.

and unlocked entrance doors, access to the barracks was available to anyone at any hour of the day or night, a problem particularly acute on open installations with no gate guard. In barracks with common latrines, residents must walk down the hallway at night for access. In response to these concerns, the USAREUR IG recommended installing locks on the main entrance doors of SQ buildings and issuing keys to residents.<sup>63</sup> What the IG failed to note is that SQ buildings usually do not have a system to "buzz in" visitors to the building (as in family quarters buildings in Germany). If a key would be needed for the main door, how legitimate visitors or the chain of command would gain access to the SQ was not addressed.

Although not raised in the IG inspections, another area of concern is the possibility of the sexual harassment of female soldiers living in the barracks. When men and women live in the same barracks building (although usually in separate areas or separate floors), soldiers have easy access to each other's rooms. Women could find themselves the unwilling recipients of male attention ranging from the mere obnoxious come-on ("Hey, baby; let's go party!"), to more serious harassment such as denigrating sexual slurs or banging on doors during the night demanding sex. Under SSQOL conditions, female soldiers will not be able to obtain the CQ's immediate assistance to stop the harasser.

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<sup>63</sup> *Id.*

Some supporters of SSQOL equate the new barracks living conditions to those in a college dormitory. However, even a college dormitory provides supervision (resident advisors, floor monitors) and security (controlled access, visiting hours, guards after hours) to its residents. The command is not able to safeguard soldiers and property in the barracks effectively without a CQ.

3. *No Control over Barracks Visitors*--On both inspections, the USAREUR IG noted significant problems with the new visitation policy.<sup>64</sup> Differing definitions of "overnight" resulted in differing policies among units. For example, some commanders established a time by which all visitors must have vacated the barracks (for example, by 0500 hours or before first formation). Other commanders candidly admitted they did not see a problem with overnight visits. Some commanders said it was not an "overnight" visit if visitors never went to sleep nor closed their eyes while in a reclined position. In nearly all cases, the chain of command felt the policy was not enforceable and made to attempt to do so unless an incident occurred in the barracks caused by someone spending the night.

Without a CQ, commanders likewise had difficulties enforcing the conditions on visitation by minors. The response to this

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<sup>64</sup> *Id.* at 49; USAREUR IG Inspection, *supra* note 47, at 3.

concern was to install signs on SQ entrances warning that anyone under the age of 18 was not permitted unless accompanied by a parent or guardian.<sup>65</sup> One former brigade commander stated that he did not know his barracks had runaway teenage girls living with some of the soldiers until he began seeing names he could not pronounce on the daily military police blotter.<sup>66</sup> Not only underage local nationals, but military dependents -- generally female -- are able to visit in the barracks without much supervision over their activities. Young soldiers with young teenage girls in an unsupervised setting yields the opportunity to engage in carnal knowledge.

Commenting on the wisdom of eliminating the visitation restrictions, the USAREUR Office of the Judge Advocate opined, "Mixed sex visitation rules and curfews for local nationals on U.S. kasernes reduce the potential for sexual misconduct and provide greater physical and operational security on military facilities. The higher quality of today's soldiers does not in itself eliminate the necessity of these rules."<sup>67</sup>

SSQOL policy includes a provision that commanders may restrict privileges of soldiers whose guests infringe on the

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<sup>65</sup> USAREUR IG Followup Inspection, *supra* note 49, at 49.

<sup>66</sup> Unpronounceable because the names were eastern European in origin. This particular unit was located near the former East German border.

<sup>67</sup> OJA Comment, *supra* note 56, para. 4b.

privacy of or access to SQ facilities by bona fide occupants.<sup>68</sup> However, sanctions are not a meaningful deterrent when little danger exists of being caught violating the policy. Catching violators is difficult without a CQ or daily inspections. With CINCUSAREUR's steadfast refusal to provide further guidance as to what "overnight" means or how to enforce the rule, most commanders recognize that no effective method exists under the present system to enforce the policy.

When viewed together, the removal of both the CQ and restrictions on alcohol and visitation have created an potentially dangerous environment for young, undisciplined soldiers. Alcohol and sex in the barracks invariably leads to misconduct. A military judge in Europe reports that approximately 20 percent of the courts-martial he has tried are the direct result of abuses of SSQOL privileges in the barracks.<sup>69</sup>

#### *B. Limits on the Commander's Authority to Inspect*

"For each time the NCOs of my unit conduct a health and

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<sup>68</sup> SSQOL Policy Memo, *supra* note 13, at 6.

<sup>69</sup> Telephone Interview with Lieutenant Colonel Wendell G. Jewell, Chief Circuit Judge, Sixth Judicial Circuit, U.S. Army Europe (Mar. 31, 1995). Judge Jewell stated that during his nine months as a military judge in USAREUR, about 20 percent of the approximately 80 cases he has tried were the direct result of SSQOL abuses. Specifically, he noted an increase in alcohol-related misconduct and sexual misconduct in the barracks.

welfare inspection and go through the pockets of my clothes; search every drawer in my desk and look inside my boots and shoes, the less pride and honor I feel being a soldier of my country."<sup>70</sup>

1. *Historical Background*--Inspections are expected to discover, correct, and deter conditions detrimental to military efficiency and safety, and serve as the foundation for building an effective fighting force.<sup>71</sup> By insuring the presence and proper condition of personnel, equipment, and their environment, military inspections maintain health and safety not only during peacetime, but also guard against personnel becoming unnecessary casualties during combat.<sup>72</sup> Thus, inspections are an integral part of the commander's historically unquestioned authority to ensure fitness, security, and discipline within his command.

An early case discussing the key distinction between and inspection and a search explained that "searches are not to be confused with inspections of military personnel . . . conducted by a commander in furtherance of the security of his command. These are wholly administrative or preventive in nature and are

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<sup>70</sup> Blucher, *supra* note 3, at 70.

<sup>71</sup> MANUAL FOR COURTS-MARTIAL, United States, MIL. R. EVID. 313 analysis, App. 22, at A22-20 [hereinafter MCM].

<sup>72</sup> *Id.*

within the commander's inherent powers."<sup>73</sup> This language was quoted again in a case articulating the differences between an inspection and a search:

[A] search is made with a view toward discovering contraband or other evidence to be used in the prosecution of a criminal action. In other words, it is made in anticipation of prosecution. On the other hand, an inspection is an official examination to determine the fitness or readiness of the person, organization or equipment, and though criminal proceedings may result from matters uncovered thereby, it is not made with a view toward any criminal action.<sup>74</sup>

Appellate courts have recognized further reasons to conduct inspections, such as, "to assist [the commander] to maintain orderly, clean, and safe barracks; to insure the preparedness of individual soldiers; to enforce regulations prohibiting items of inherently dangerous nature . . . and, presumably, contrabands such as marijuana or narcotics."<sup>75</sup>

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<sup>73</sup> United States v. Gebhart, 10 U.S.C.M.A. 606, 28 C.M.R. 172 (1958).

<sup>74</sup> United States v. Lange, 15 U.S.C.M.A. 486, 489, 35 C.M.R. 458, 461 (1965).

<sup>75</sup> United States v. Brashears, 45 C.M.R. 438, (A.C.M.R. 1972).

In the early 1970s, two Court of Military Appeals (COMA)<sup>76</sup> decisions -- *United States v. Thomas*<sup>77</sup> and *United States v. Roberts*<sup>78</sup> -- eviscerated the commander's historic power to conduct inspections. As a direct result, the 1980 Military Rules of Evidence included a provision authorizing inspections within the limits of these cases. The current MIL. R. EVID. 313(b), adopted as a part of the change to the Manual for Court-Martial, 1984, reflects the traditional philosophy toward inspections, focusing on the commander's purpose.<sup>79</sup>

2. *SSQOL Inspections*--When SSQOL was in its staffing phase, USAREUR OJA recognized the area of inspections as a potential area of concern. Noting that the draft proposal would permit barracks inspections for health purposes only, OJA opined that inspections were necessary for other purposes such as safety,

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<sup>76</sup> On October 5, 1994, the President signed into law Senate Bill 2182, Defense Authorization Act for Fiscal Year 1995, which redesignated the COMA as the U.S. Court of Appeals for the Armed Forces (CAAF). See Nat'l Def. Auth. Act for Fiscal Year 1995, Pub. L. No. 103-337, 108 Stat. 2663, 2831 (to be codified at 10 U.S.C. § 941). This thesis will refer to the court by its name at the time its decision was rendered.

<sup>77</sup> *United States v. Thomas*, 1 M.J. 397 (C.M.A. 1976). For an in-depth examination of this case and its predicted impact on inspections, see Captain John S. Cooke, *United States v. Thomas and the Future of Unit Inspections*, ARMY LAW., July 1976, at 1.

<sup>78</sup> *United States v. Roberts*, 2 M.J. 31 (C.M.A. 1976). The lawfulness of a "shakedown" inspection using a drug detection dog was the issue in this case.

<sup>79</sup> DEP'T OF ARMY, PAMPHLET 27-22, EVIDENCE, para. 22-8a(3) (15 Jul. 1987).

general appearance, and prohibited items. Without inclusion of these related purposes, OJA asserted that the command's ability to look for prohibited items would be limited and would increase the likelihood of contested inspections and searches at courts-martial.<sup>80</sup> The revised wording, as published in the original SSQOL memorandum, read:

3. Inspections. Since the purpose of these proposals is to enhance morale by promoting individual responsibility, leaders must use good judgment in conducting inspections.

a. Where feasible, eliminate routine room inspections. However, commanders retain authority to conduct room inspections to ensure security, military fitness, or good order and discipline of units and facilities.

This definition of inspections was derived from MIL. R. EVID. 313, which states:

An "inspection" is an examination of the whole or part of a unit . . . conducted as an incident of command the primary purpose of which is to determine and to ensure the security, military fitness, or good order and discipline . . . An inspection may include but is not limited to an examination to determine and to

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<sup>80</sup> OJA Comment, *supra* note 56, para. 4a.

ensure that any or all of the following requirements are met: that the command is properly equipped, functioning properly, maintaining proper standards of readiness, sea or airworthiness, sanitation and cleanliness, and that personnel are present, fit, and ready for duty. An inspection also includes an examination to locate and confiscate unlawful weapons and other contraband.<sup>81</sup>

Comparing the two definitions, the USAREUR definition of "inspection" successfully incorporated all fundamental components of inspection in MIL. R. EVID. 313. However, the current SSQOL policy defines "inspection" differently:

- j. Use good judgment in conducting inspections. SSQOL initiatives enhance morale by allowing soldiers greater privacy and wider latitude in what they can do in their quarters. Commanders will -
  - (1) Conduct room inspections only to the extent needed to ensure occupants maintain neatness, cleanliness, health, safety, and security standards and do not infringe on the rights of other occupants. Commanders may need to inspect rooms not meeting standards more frequently than they inspect other rooms until standards are met.
  - (2) Not conduct late-night or weekend "walk-throughs,"

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<sup>81</sup> MCM, *supra* note 71, MIL. R. EVID.313(b) .

except under special conditions that create a need to do so. Security checks of common areas are allowed.

(3) Conduct personal military clothing, organizational clothing and individual equipment, or TA-50 gear accountability and serviceability inspections outside soldiers rooms. When possible, commanders will conduct these inspections at a location other than the SQ.<sup>82</sup>

Although MIL. R. EVID. 313(b) does not specify limits on inspection authority, the drafters' analysis states that the power to inspect personnel and property may be withheld by a competent superior authority.<sup>83</sup> A vital issue is whether the current SSQOL policy withholds the USAREUR subordinate commanders' power to inspect.

Perhaps not the power but certainly the extent to which the commander may inspect has indeed been limited. By its clear language, SSQOL limits the permissible scope of the commander's room inspections "only to the extent needed to ensure occupants maintain neatness, cleanliness, health, safety, and security standards and do not infringe on the rights of other occupants." This is a more restrictive definition than MIL. R. EVID. 313(b)'s "security, military fitness, or good order and discipline of the unit." Of the types of "examinations" enumerated under MIL. R.

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<sup>82</sup> SSQOL Policy Memo, *supra* note 13, at 4.

<sup>83</sup> MCM, *supra* note 71, at 68.

EVID. 313(b) only "sanitation and cleanliness" seem to fall within the SSQOL parameters.<sup>84</sup> The focus under SSQOL appears to be on the conditions of the rooms, not of the soldiers or the unit.

Although not clearly articulated, an inspection for SSQOL's "security purposes" could be construed to include MIL. R. EVID. 313(b)'s "examination to locate and confiscate unlawful weapons and other contraband." However, SSQOL's "security purposes" could mean merely an inspection of the internal security of the barracks -- its entrances and common areas -- and protection to rooms, furnishings, or possessions of the occupants. Furthermore, SSQOL clearly limits when commanders may conduct inspections ("not conduct late-night or weekend room 'walk-throughs'"), thereby further defining MIL. R. EVID. 313(b)'s caveat that inspections must be conducted in a "reasonable fashion." By taking TA-50 and equipment serviceability inspections completely out of SQs, SSQOL restricts how the commander may inspect to determine the command is "properly equipped."

As noted on both USAREUR IG inspections, the chain of command still remains uncertain on its authority to conduct

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<sup>84</sup> What's left out from MIL. R. EVID. 313(b): "that the command is properly equipped, functioning properly, maintaining proper standards of readiness . . . and that personnel are present, fit, and ready for duty."

routine inspections.<sup>85</sup> The lack of definitive guidance and many questions from the field early in the program led USAREUR OJA to publish an information paper entitled "Commanders' Authority in Barracks under the Single Soldier Initiative," to clarify the original SSQOL memorandum. Explaining that the policy did not relieve commanders of their responsibility to ensure a safe, secure environment for barracks residents, the information paper suggested measures such as periodic checks of exterior doors and common areas would still be allowed under the policy.<sup>86</sup> Also proposed were periodic inspections (monthly or bimonthly) to ensure soldiers were adhering to "neat and clean" standards and were properly maintaining government property.<sup>87</sup>

Although the USAREUR IG followup inspection found substantial improvement in most SSQOL areas since the initial inspection, more questions than ever had been generated in the area of inspections. Even with elimination of late night and weekend walkthrough inspections, some soldiers still complained about the frequency of inspections.<sup>88</sup> Some commanders believed subordinates were not inspecting frequently or thoroughly enough.

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<sup>85</sup> USAREUR IG Inspection, *supra* note 47, at 2; USAREUR IG Followup Inspection, *supra* note 49, at 30.

<sup>86</sup> Commanders' Authority in Barracks Under the Single Soldier Initiative, Op., Military and Civil Law Division, U.S. Army Europe, AEAJA-MC, 92/556, para. 3 (9 Oct. 1992).

<sup>87</sup> *Id.*

<sup>88</sup> USAREUR IG Followup Inspection, *supra* note 49, at 30.

Frequency of room inspections varied widely from unit to unit, from room inspections monthly, to common areas daily, to only when necessary.<sup>89</sup> This lack of consistency, even within battalions, could lead to widely-differing standards of readiness, security, and discipline within units housed in the same location or working together.

Compounding the inspection confusion is the addition of the base support battalion's local housing office to manage barracks. Regardless of the base support battalion's responsibility to manage and maintain soldier quarters, the tactical chain of command bears the greatest interest in, and the ultimate responsibility for, the soldiers and their living conditions. While the base support battalion's primary interest lies in the status and condition of the quarters and furnishings, the tactical command's interest remains with ensuring the health, security, safety, and fitness for duty of the soldiers within the command. These cross-purposes underlie the confusion over the inspection question. Who bears the responsibility for inspections of soldier quarters?

Although the rule itself is silent, the drafters of MIL. R. EVID. 313 state that "any individual placed in a command or appropriate supervisory position may inspect the personnel and

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<sup>89</sup> *Id.* at 2.

property within his or her control."<sup>90</sup> Therein lies the problem: the property (that is, the barracks and furnishings) are within the control of the BSB commander while the personnel belong to the chain of command of their tactical unit.

The latest change to the USAREUR regulation on housing management incorporated SSQOL into the housing program. Regarding inspections, the regulation specifies:

Unit commanders retain responsibilities and authority to inspect common areas and rooms assigned to members of their units. Inspections should be only to the extent necessary to ensure that adequate room repair, safety, sanitation, and security are maintained. Enforcement of SQ standards is a joint ASG, BSB, and unit responsibility.<sup>91</sup>

Note that these four conditions -- repair, safety, sanitation, and security -- apply to the barracks and the rooms, not to the soldiers who live there. The tactical commander cannot determine or insure the security, military fitness, or good order and discipline of his unit if SSQOL limits him to checking the conditions of the building. When too many commanders have

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<sup>90</sup> MCM, *supra* note 71, MIL. R. EVID. 313 analysis, App. 22, at A22-21.

<sup>91</sup> USAREUR Reg. 210-50, *supra* note 23, para 117g.

overlapping areas of responsibility, it is no wonder that commanders remain confused on this issue.

*C. Limits on the Commander's Authority to Order Searches*

"Indeed the very term 'neutral and detached commander' is an oxymoron, for how can a person 'command' a military unit and still be detached, disinterested, and neutral?"<sup>92</sup>

Along with the area of inspections, SSQOL has had a tremendous impact in the area of command authorized searches. Just as questions exist on who bears responsibility for inspections, the related question is who may properly authorize a search within soldier quarters. Because search and seizure is perhaps the most litigated area of military criminal law, the addition of SSQOL into this critical area portends a momentous effect in military justice cases.

Under the Military Rules of Evidence, searches based upon probable cause may be authorized by a military judge, a military magistrate, or a commander. However, the Rules restrict the authority of the commander to authorize a search. Under MIL. R. EVID. 315(d)(1), the commander has the power to authorize a search if he "has control over the place where the property or

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<sup>92</sup> *United States v. Lopez*, 35 M.J. 35, 45 (C.M.A. 1992) (Cox, J., concurring).

person to be searched is situated or found."<sup>93</sup> Thus, the analysis to determine the proper commander to authorize searches under SSQOL must necessarily focus on who controls the place. Again, the dichotomy of ownership of the quarters separately from the soldiers poses the same problem with inspections.

Long before the days of SSQOL, local tactical commands generally housed single soldiers, by unit, together in the same building, to maintain unit integrity. This was the traditional concept of barracks: Company A's headquarters (consisting of command offices and orderly room), supply rooms, and soldier barracks rooms were housed together in one building. In 1991, the original SSQOL memorandum suggested that commanders consider centralized management of barracks under the BSB housing office. This proposal plus the schedule of renovating barracks buildings led to soldiers from differing units being housed together, in some cases, for the first time. Although some commanders tried to maintain unit integrity by floor or wing, it became increasingly common for one barracks building to house personnel of several units.

During the growing pains of the first version of SSQOL, USAREUR OJA recognized the potential problem of searches, publishing in 1992 an information paper entitled "Legal Authority to Authorize Searches Under the Single Soldier Quality of Life

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<sup>93</sup> MCM, *supra* note 71, MIL. R. EVID. 315(d)(1).

Initiative." Under a community-managed barracks concept, "control over the place to be searched" would normally vest in the area support group commander, base support battalion commander, or area support team commander with direct management responsibilities over barracks. However, the OJA information paper pointed out that, in some circumstances, a tactical commanders might exercise sufficient control over "the place" to authorize a search. For example, if soldiers from one unit occupied an entire floor or wing, or if a commander had responsibility over all or a specific part of the barracks building, then the commander may exercise sufficient authority over the place to authorize a search.<sup>94</sup>

Circumstances have changed since that opinion was rendered. Centralized management of soldier quarters by the base support battalion is now required in USAREUR.<sup>95</sup> By this edict, the tactical commander no longer has the requisite control under MIL. R. EVID. 315(d)(1) to allow him to authorize a search of his soldiers' rooms.

As a result, at least one other commander -- outside the tactical chain of command -- will need to become involved in what has historically been within the control of the suspect's

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<sup>94</sup> Legal Authority to Authorize Searches Under the Single Soldier Quality of Life Program, Op. Military and Civil Law Division, U.S. Army, Europe, AEAJA-MC/92/490, para. 2e.

<sup>95</sup> USAREUR Reg. 210-50, *supra* note 23, at para 118.

immediate unit commander. Law enforcement officials of the Military Police Investigators, Criminal Investigation Command, and Customs Police, who have been trained to coordinate cases directly with the unit commander of the suspect, will have to coordinate with a commander outside the chain of command. Alert trial counsel will need to train law enforcement officials on the intricacies of search authorizations. To avoid potential search issues at trial, law enforcement officials should rely more frequently on search authorizations from military judges or military magistrates rather than guess which commander has the authority to grant the authorization. Although procedurally cumbersome, going to the BSB commander for a search authorization has one advantage -- that is, that the BSB commander will likely be more impartial (neutral and detached) in his decision than the commander of the soldier.<sup>96</sup>

A command can have only one commander, but an area could have more than one commander with authority to authorize searches. In *United States v. Mix*, the COMA found that three battalion commanders (whose units used the dining facility and its parking lot) exercised sufficient control over the parking lot to authorize a search of a car parked there.<sup>97</sup> Arguably, this could apply to the situation where both the BSB commander

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<sup>96</sup> MCM, *supra* note 71, MIL. R. EVID.315(d).

<sup>97</sup> *United States v. Mix*, 35 M.J. 283, 288 (C.M.A. 1992).

and tactical commander have an interest in the barracks. However, the key distinguishing factor is that the area in Mix was a parking lot, not a building. Normally, a commander does not "sign for" a parking lot. A parking lot is generally a shared common area, where a soldier has no designated parking place. But a barracks room is not a public place. Within USAREUR, command responsibility for barracks is not shared. SSQOL and the USAREUR housing regulation stripped tactical commanders of their ownership of the barracks and gave sole command responsibility to the BSB commander.

When soldiers were given greater privileges under SSQOL, commanders lost the effective means to preserve order and discipline within the barracks. Regulation of conduct and the authority to inspect and search are indispensable tools to maintain military readiness. Allowing "greater privacy and wider latitude in what [single soldiers] can do in their quarters"<sup>98</sup> has led to less command supervision over barracks occupants and their potentially disruptive activities.

#### IV. Soldiers' Expectations of Privacy in the Home

Generally, a military person's place of abode is the place where he bunks and keeps his few private possessions. His home is where the necessities of the

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<sup>98</sup> SSQOL Policy Memo, *supra* note 13, at 4.

service force him to live. This may be a barracks, tent, or even a foxhole. Whatever the name of his place of abode, it is his sanctuary against unlawful intrusion; it is his "castle."<sup>99</sup>

#### A. *Fourth Amendment Expectations of Privacy*

Military courts have decided the Fourth Amendment protects members of the armed forces.<sup>100</sup> However, the Fourth Amendment covers only areas in which an accused has a reasonable expectation of privacy.<sup>101</sup> To analyze the reasonableness of an expectation of privacy, military courts examine "whether or not the particular locale is one in which there was a reasonable expectation of freedom from government intrusion."<sup>102</sup> Thus, a determination of expectation of privacy depends on whether the soldier could reasonably anticipate governmental intrusion into that area. In making this finding, the courts have weighed and examined a number of factors, such as ownership or possessory

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<sup>99</sup> *United States v. Adams*, 5 U.S.C.M.A. 563, 18 C.M.R. 187 (1955).

<sup>100</sup> A detailed discussion of whether the Fourth Amendment applies to the armed forces is beyond the scope of this thesis. For a thorough examination of this issue, see Colonel Frederic I. Lederer and Lieutenant Colonel Frederic L. Borch, *Does the Fourth Amendment Apply to the Armed Forces?*, 144 *MIL. L. REV.* 110 (1995).

<sup>101</sup> *Katz v. United States*, 389 U.S. 347 (1967).

<sup>102</sup> *United States v. Weckner*, 3 M.J. 546 (A.C.M.R. 1977).

interest in the place or thing to be searched, the public's accessibility to the area, the person's ability to exclude others, and the relative value society grants to the type of object or location.<sup>103</sup> Although the COMA has recognized that even a barracks room can be a soldier's castle, the right of privacy the soldier enjoys in his home varies depending on the type of "castle," or quarters.

1. *On Post*--In earlier days, the authority of the commander to authorize a search was broader than today:

Authority to make, or order, an inspection or search of a member of the military establishment, or of a public building in a place under military control, even though occupied as an office or as living quarters by a member of the military establishment, always has been regarded as indispensable to good order and discipline in any military command . . . . such a search is not unreasonable and therefore not unlawful.<sup>104</sup>

Military courts consistently cited this absolute authority to sustain searches in places ranging from an enlisted soldier's

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<sup>103</sup> Captain Peter D. Vint and Jeffrey Fayer, *Probable Cause for "Shakedown" Generalized Barracks Searches*, ARMY LAW., May 1986, at 33.

<sup>104</sup> Searches, Op. JAG, Army, JAG 250.413 (23 July 1930), as digested in Dig. Ops. JAG 1912-1940, § 395(27).

barracks room<sup>105</sup> to a lieutenant's BOQ room<sup>106</sup> without even probable cause, finding that military necessity rendered the warrantless search reasonable. In a 1933 case, the Board of Review determined that "public" quarters on a military reservation were subject to search on reasonable grounds.<sup>107</sup> A later Board of Review upheld a warrantless search of government quarters, stating, "A search of government quarters, authorized by the commanding officer, having jurisdiction over the locality where such quarters are situated, is legal. Such authorization is the equivalent of a search warrant, the commanding officer being responsible for and having control over the personnel and property in his charge."<sup>108</sup> Still, probable cause was not mentioned as a requisite for the commander's authorization. The early courts deferred to the commander's historically unquestioned authority to order searches.

Not until after the establishment of the Court of Military Appeals did case law begin to recognize the necessity of probable cause -- along with a warrant or commander's authorization -- as a requisite for a search.

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<sup>105</sup> United States v. Arteaga, 1 C.M.R. 632 (1951).

<sup>106</sup> United States v. Kemerer, 28 B.R. 393 (1943).

<sup>107</sup> United States v. Lichtenberger, Op. JAG, Army, CM 199465 (1933), as digested in Dig. Ops. JAG 1912-1940, § 1304(2).

<sup>108</sup> United States v. Pogue, 68 B.R. 385, 393 (1947).

a. *Barracks*--Historically, military barracks have been treated differently from private dwellings. Appellate courts have recognized that "the soldier cannot reasonably expect the Army barracks to be a sanctuary like his civilian home," although "military quarters have some aspects of a dwelling or a home and in those respects the military member may reasonably expect privacy protected by the Fourth Amendment."<sup>109</sup> Early cases upheld command directed searches, even when not supported by probable cause, as long as the search was reasonable. The 1951 *Manual for Courts-Martial* did not require probable cause as a prerequisite for a command authorized search.<sup>110</sup>

The COMA began developing a probable cause requirement for search authorizations in *United States v. Brown*. In *Brown*, the COMA reversed a conviction based upon a command authorized search of the accused and several other soldiers based on a suspicion they had been using drugs. The COMA found the search unreasonable because it was not based upon probable cause, rejecting the idea that a search is automatically "reasonable" simply because it had been authorized by the commander.<sup>111</sup> With this holding, the court began its break away from the historical argument that military necessity overrode the plain language of

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<sup>109</sup> Committee for G.I. Rights v. Callaway, 518 F.2d 466 (D.C. Cir. 1975).

<sup>110</sup> MANUAL FOR COURTS-MARTIAL, United States, para. 152 (1951).

<sup>111</sup> *United States v. Brown*, 10 C.M.A. 482, 28 C.M.R. 48 (1959).

the Fourth Amendment. In 1969, the President promulgated several amendments to the *Manual*, including a probable cause requirement for command authorized searches.<sup>112</sup>

Military courts emphasize that those who enter the armed forces recognize that by doing so, they are changing their status materially and they will consequently enjoy less privacy than as civilians.<sup>113</sup> A major factor diminishing their privacy in the barracks is the knowledge that they are subject to inspections by the chain of command. Although inspections may limit the extent of privacy enjoyed by the soldier within his room, the frequency of inspections cannot totally negate the soldier's expectation of privacy. The COMA has held that even daily health and welfare inspections do not completely cancel a soldier's reasonable expectation of privacy in a barracks room.<sup>114</sup> However, the COMA has recognized that when persons to be inspected are located in a "highly regulated environment," they have a reduced expectation of privacy, which is a factor in determining the reasonableness of the inspection.<sup>115</sup>

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<sup>112</sup> DEP'T OF ARMY, PAM. 27-22, EVIDENCE, para. 21-2a (15 July 1987).

<sup>113</sup> *United States v. Middleton*, 10 M.J. 123, 128 (C.M.A. 1981); *United States v. Roberts*, 2 M.J. 31, 36 (C.M.A. 1976).

<sup>114</sup> *United States v. Thatcher*, 28 M.J. 20 (C.M.A. 1989).

<sup>115</sup> *United States v. Bickel*, 30 M.J. 277, 285 (C.M.A. 1990).

By 1989, the military courts had noticed the armed forces' increased efforts to enhance living conditions in the barracks. In *United States v. Middleton*, the COMA noted the military's new endeavor to provide privacy for service members in their barracks and dormitories did not diminish the commander's authority to inspect.<sup>116</sup> Consequently, the court found that during a legitimate health and welfare inspection, the entire area inspected became public as to the commander, and no privacy from the commander could be expected within the scope of the inspection.<sup>117</sup>

A later case, *United States v. Thatcher*, scrutinized how cosmetic changes to barracks may affect privacy interests. Noting the traditional barracks layout had evolved from large open bays toward semi-private rooms, the court concluded, "There is a much greater expectation of privacy in such a lifestyle than there is in large bays holding large numbers of individuals and having no walls or barriers between bunks and lockers."<sup>118</sup> Although this enhanced privacy could not prevent all legitimate command intrusions, the court noted that substantial expectations of privacy could arise under these modern living conditions.<sup>119</sup>

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<sup>116</sup> *United States v. Middleton*, 10 M.J. 123, 128, n. 8 (C.M.A. 1981).

<sup>117</sup> *Id.* at 129.

<sup>118</sup> *Id.* at 24, n. 8.

<sup>119</sup> *Id.*

Different areas in the barracks retain different expectations of privacy. The areas along side a barracks that are available for general access possess no reasonable expectation of privacy from a passerby, either casual or official.<sup>120</sup> Nor is there any violation of privacy when a curious passerby peers through the window blinds of a barracks window into a soldier's room.<sup>121</sup> Inside the barracks, the occupants have no expectations of privacy in common areas or hallways,<sup>122</sup> work areas<sup>123</sup>, or a communal latrine.<sup>124</sup>

However, the courts have held that soldiers have reasonable expectations of privacy from searches in their locked barracks rooms.<sup>125</sup> Within open barracks rooms, the courts have determined that a soldier has an expectation of privacy in his locked wall locker<sup>126</sup> and a chest of drawers, including any containers

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<sup>120</sup> United States v. Lewis, 11 M.J. 188 (C.M.A. 1981).

<sup>121</sup> United States v. Wisniewski, 21 M.J. 370, 372 (C.M.A. 1986).

<sup>122</sup> United States v. Peters, 11 M.J. 901 (A.F.C.M.R. 1981).

<sup>123</sup> United States v. Taylor, 5 M.J. 669 (A.C.M.R. 1978).

<sup>124</sup> United States v. Bailey, 3 M.J. 799 (A.C.M.R. 1977).

<sup>125</sup> United States v. Roberts, 2 M.J. 31, 36 (C.M.A. 1976).

<sup>126</sup> United States v. Thomas, 1 M.J. 31 (C.M.A. 1976), United States v. Gremillion, No. 88011861 (A.C.M.R. 30 Oct. 1980).

inside.<sup>127</sup> Certain possessions left out in the open -- a laundry bag tied to a soldier's bunk<sup>128</sup> and an unlocked shaving kit<sup>129</sup> -- possess no expectations of privacy in their contents.

Although soldiers' expectations of privacy serve to protect personal property from unlawful search or seizure, they do not protect the soldier's person. Soldiers can commonly expect CQs or members of the chain of command to enter their barracks room looking for them, during or after duty hours, to fulfill a mission requirement. The courts have consistently found no violation of privacy interests when a member of the chain of command enters a soldier's room (whether locked or not) for a legitimate military reason.

A typical example is *United States v. Lewis*, where a sergeant was looking for a soldier to give him a duty assignment. Looking through a crack in the drapes to see whether the soldier was in another soldier's room, the sergeant saw individuals packaging a white powdery substance. The court found that peering through the window was not a search within the meaning of the Fourth Amendment; a service member with the responsibility to locate another person to inform him of a military duty is

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<sup>127</sup> *United States v. Audain*, 10 M.J. 629 (A.C.M.R. 1980).

<sup>128</sup> *United States v. Gebhart*, 10 C.M.A. 606, 28 C.M.R. 172 (1959).

<sup>129</sup> *United States v. Ellis*, 24 M.J. 370 (C.M.A. 1987).

entitled to use a reasonable means to locate that person.<sup>130</sup> The sergeant's actions demonstrated a type of military necessity.

The law concerning apprehensions in barracks has not progressed as consistently as the law concerning searches. The Army Court of Military Review (ACMR)<sup>131</sup> held in *United States v. Jamison* that "absent exigent circumstances, appropriate authorization by a responsible commander based upon probable cause must be obtained before a private dwelling may be entered to make an arrest even though the person entering possesses authority to arrest and has probable cause to do so."<sup>132</sup> However, the court specifically reserved answering whether this rule would apply to barracks entries or searches.<sup>133</sup>

Three years later in a summary disposition, the COMA applied the rationale of *Jamison* and extended it without explanation to a warrantless apprehension made in a barracks room.<sup>134</sup> Citing *Jamison*, the court found a commander's authorization was required

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<sup>130</sup> *United States v. Lewis*, 11 M.J. 188, 191 (C.M.A. 1981).

<sup>131</sup> See *supra* note 76. The Defense Authorization Act for Fiscal Year 1995 renamed the U.S. Court of Military Review for each service as the U.S. Court of Criminal Appeals. Thus, the Army Court of Military Review (ACMR) is now the Army Court of Criminal Appeals (ACCA).

<sup>132</sup> *United States v. Jamison*, 2 M.J. 906, 909-10 (A.C.M.R. 1976).

<sup>133</sup> *Id.* at 910, n.4.

<sup>134</sup> *United States v. Davis*, 8 M.J. 78 (C.M.A. 1979).

before a CID agent could lawfully apprehend a soldier in his barracks room.<sup>135</sup> Judge Cook stated that he did not understand the majority's reliance on *Jamison*, as the ACMR had declined explicitly to extend its ruling to cover an apprehension in the barracks.<sup>136</sup> The superficial treatment of the issue left many unanswered questions.<sup>137</sup>

In 1980, the U.S. Supreme Court decided *Payton v. New York*, finding the Fourth Amendment prohibited the police from making a warrantless, nonconsensual entry into a suspect's home to make a routine arrest.<sup>138</sup> The Court's holding recognized a special privacy interest in a person's own home. Rejecting the lower court's reasoning that a warrantless entry for arrest is less intrusive than an entry for search, the Court concluded that each entry implicates the same interests in preserving the privacy and sanctity of the home and thereby deserves the same level of constitutional protection.<sup>139</sup>

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<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 80.

<sup>137</sup> For a fuller discussion of *Davis*, see Major Stephen A.J. Eisenberg, "Be It Ever So Humble, There's No Place Like Home," *ARMY LAW.*, Feb. 1980, at 28.

<sup>138</sup> *Payton v. New York*, 445 U.S. 573 (1980).

<sup>139</sup> *Id.* at 588-89. Quoting decisions of the Courts of Appeals for the D.C. Circuit and 2nd Circuit, the Court said it found these reasons persuasive and in accord with its own Fourth Amendment decisions.

After *Payton*, military courts had reason to reexamine the issue of apprehensions within barracks. In *United States v. Phinizy*, a CID agent entered a soldier's room with a pass key. Apprehending the soldier, the CID agent searched him, and found marked money from the cocaine sale he had just witnessed. Finding no flaw in the agent's probable cause determination, the court found the entry and apprehension of the accused without a formal authorization from the soldier's commander was fully justified because of the need to preserve the evidence of the accused's recent crime.<sup>140</sup> Rather than examine the issue of whether the barracks was a "home" within the meaning of *Payton*, the court used *Payton*'s "exigent circumstances" exception to avoid deciding the issue. The following year, the COMA declined to address specifically "whether, or to what extent, *Payton* . . . applies to rooms in military barracks or dormitory or to various other types of on-post military housing."<sup>141</sup>

The COMA next addressed warrantless apprehensions in the barracks in *United States v. Tipton*, finding apprehensions in a public place such as a barracks hallway did not require a prior warrant or authorization.<sup>142</sup> The court did not seize the

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<sup>140</sup> *United States v. Phinizy*, 12 M.J. 40 (C.M.A. 1981).

<sup>141</sup> *United States v. Mitchell*, 12 M.J. 265, 269 n.1 (C.M.A. 1982). This case held the off-post residence of a service member in a foreign country enjoys the same Fourth Amendment protections as an off-post residence in the United States.

<sup>142</sup> *United States v. Tipton*, 16 M.J. 283, 285 (C.M.A. 1983).

opportunity to broaden the definition of public places to include barracks rooms within the category of places that cannot yield a reasonable expectation of privacy.

When created in 1984, the Rules for Courts-Martial incorporated a concept of "private dwellings" into its rules on apprehensions. R.C.M. 302(e) allows apprehensions to be made at any place except "private dwellings." These are defined as "dwellings, on or off a military installation, such as single family houses, duplexes, and apartments. The quarters may be owned, leased, or rented by the residents, or assigned, and may be occupied on a temporary or permanent basis."<sup>143</sup> Furthermore, R.C.M. 302(e) excludes [from the definition of private dwelling] "living areas in military barracks, vessels, aircraft, vehicles, tents, bunkers, field encampments and similar areas," regardless of whether subdivided into smaller living areas.<sup>144</sup> The drafters' intent was to clarify the extent to which Payton should apply, consistent with special conditions in the military environment.<sup>145</sup>

With this framework, the military courts began a closer examination of apprehensions in barracks. Using a derivation of

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<sup>143</sup> MCM, *supra* note 71, R.C.M. 302(e).

<sup>144</sup> *Id.*

<sup>145</sup> MCM, *supra* note 71, R.C.M. 302 analysis, App. 21, at A21-14.

the military necessity argument, the Navy-Marine Court of Military Review held that military authorities may enter barracks and berthing areas without arrest authorizations to effect the lawful apprehension of a person subject to military control.<sup>146</sup> The court noted that the design or construction of the barracks building or even the freedom granted inside by the commander does not obviate that military necessity requires effective control over the unit.<sup>147</sup> The court would not relook apprehensions in the barracks until *United States v. McCarthy*.<sup>148</sup>

In *McCarthy*, the appellant contended his warrantless apprehension in the Little Rock Air Force Base dormitory<sup>149</sup> violated the Fourth Amendment. He argued that Payton's proscription against warrantless arrests in a person's home should apply to prevent his warrantless apprehension in the barracks. Although R.C.M. 302 specifically excluded barracks rooms from its definition of private dwelling, appellant contended this violated the Payton warrant requirement. In an

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<sup>146</sup> *United States v. McCormick*, 13 M.J. 900, 904 (N.M.C.M.R. 1982).

<sup>147</sup> *Id.* at 904.

<sup>148</sup> *United States v. McCarthy*, 38 M.J. 398 (C.M.A. 1993).

<sup>149</sup> Appellant, an Army soldier stationed at the Joint Readiness Training Center, lived in a Little Rock Air Force Base dormitory. The military quarters for single junior enlisted men and women in the Air Force are called dormitories, while in the Army, similarly-styled buildings for single soldiers are called barracks. For the purpose of this case, the two terms are synonymous.

opinion authored by Judge Gierke, the COMA affirmed, ruling the warrantless apprehension was lawful.<sup>150</sup>

Noting that constitutional protections take on a different character in a military context, the court discussed the degree of privacy in a military barracks, stating the military member's reasonable expectation of privacy in the barracks is limited by the command's need for military discipline and readiness.<sup>151</sup> Because the Fourth Amendment proscribes only "unreasonable" searches and seizures, the COMA pointed out that the Supreme Court's definition of "reasonable" may be affected by a situational need for order and discipline.<sup>152</sup> Addressing the need of military authorities to locate a soldier for a military reason, the court opined that the security policeman in *McCarthy* had the military duty to locate the suspect, thus, a legitimate military reason to enter the barracks room.

The critical difference the court found was the military's need to maintain order and discipline in the barracks and ultimately the unit. Although modern barracks may be more comfortable and private than the old open bays, the COMA held that the commander's need for discipline and readiness remained

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<sup>150</sup> *Id.* at 403.

<sup>151</sup> *Id.* at 402.

<sup>152</sup> *Id.*

unaffected.<sup>153</sup> The court concluded that a barracks did not provide the same sanctuary as a private home and that no reasonable expectation of privacy was infringed by the warrantless entry.<sup>154</sup>

In his concurring opinion, Judge Wiss stated that the majority holding rested implicitly on the premise that no Fourth Amendment reasonable expectation of privacy exists in a barracks room. Judge Wiss said such a holding means that a barracks room is "as publically accessible as is a barracks hallway," permitting intrusions without authorizations or probable cause.<sup>155</sup> Such an interpretation portends that, despite the military courts' case law to the contrary, warrantless searches in the barracks would be constitutional.

b. *Family Housing*--The single soldier's expectation of privacy in the barracks that currently exists under the law differs from that of his counterpart living in family housing. The occupants of family quarters on an Army post have less privacy and freedom in their homes than they would if they lived in the civilian community. Numerous regulations on activities within quarters affect the degree of expectation of privacy in on post quarters. The installation commander has broad discretion

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<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 405.

in the areas of local police and sanitation requirements for family quarters.<sup>156</sup> Inside the quarters, the commander has the authority to limit the types of money-making activities that may be conducted in family housing.<sup>157</sup> Local regulations governing family quarters on post are generally not unreasonable and are similar to city ordinances or some landlords' lease agreements.<sup>158</sup>

Likewise, military case law finds the commander's authority does not stop at the entrance door to family quarters. In *United States v. Hines*, the accused's commander went to the accused's on-post quarters at the request of the accused's wife after a domestic quarrel. The accused refused to respond to the commander's request to let them in. As the commander reached for the screen door, he heard the bolt action of a carbine and the accused's voice saying, "don't move." As a result of this incident, the accused was tried and convicted of assaulting his commander. By a divided vote, the COMA affirmed the conviction. The court split over the issue whether the commander was acting in an official or private capacity. The majority took the view that he was acting as a commander (in an official capacity) when he went to investigate the disturbance, and consequently, had

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<sup>156</sup> Lieutenant Colonel Arthur A. Murphy, *The Soldier's Right to a Private Life*, 24 MIL. L. REV. 97, 109 (1964).

<sup>157</sup> DEP'T OF ARMY, REG. 210-50, HOUSING MANAGEMENT, para. 3-25 (24 Apr. 1990) [hereinafter AR 210-50].

<sup>158</sup> Murphy, *supra* note 155, at 109.

just cause to enter the accused's quarters.<sup>159</sup> Importantly, the opinion underscores the concept that merely because military quarters on an installation are assigned to an individual, military authorities do not have the right to enter at will or without a legitimate reason.<sup>160</sup>

To determine the extent of the commander's authority to search quarters in family housing, the COMA gradually began to recognize and follow civilian law closely.<sup>161</sup> In *United States v. Peters*, the Air Force Court of Military Review held that occupants of military family housing have expectations of privacy that extend to the nonpublic ground immediately adjacent to their premises.<sup>162</sup> However, a later decision by that same court in *United States v. Guillen* found a dog sniff at the doorstep of the accused's family quarters did not violate any expectations of privacy.<sup>163</sup> The court distinguished the two cases. In *Peters*, the dog and handler walked at night around the windows of the

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<sup>159</sup> *United States v. Hines*, 7 U.S.C.M.A. 75, 21 C.M.R. 201 (1955).

<sup>160</sup> Robert E. Quinn, *The United States Court of Military Appeals and Individual Rights in the Military Service*, 35 NOTRE DAME LAW. at 491.

<sup>161</sup> Denise K. Vowell, *The Fourth Amendment Warrant Requirement and Courts-Martial: Military Justice versus Military Readiness*, 8 AM. J. CRIM. LAW 281, 291 (1980).

<sup>162</sup> *United States v. Peters*, 11 M.J. 901 (A.F.C.M.R. 1981).

<sup>163</sup> *United States v. Guillen*, 14 M.J. 518 (A.F.C.M.R. 1982).

accused's quarters; in *Guillen*, the dog and handler walked in the daytime on the multi-family building's common area sidewalk to the accused's door. The court found it objectively unreasonable for the accused to claim he had an expectation of privacy at the only door to his quarters where a member of the public might use the walkway to the door to visit him.<sup>164</sup>

In *Jamison*, the ACMR held an arrest authorization was required before making an apprehension within family housing, stating it is a private dwelling.<sup>165</sup> In a footnote, the court said it was not deciding whether this would apply to barracks entries or searches.<sup>166</sup>

Although defined as a "private dwelling" under the Rules for Courts-Martial, family quarters do not necessarily give their occupants the same expectation of privacy that civilians enjoy in their homes. From the examination of case law above, the primary reason for the lessened expectation of privacy on post is the command's interest in maintaining order and discipline within the area under his control. Regulations governing conduct and standards within quarters serve the commander's interest in maintaining a safe, secure, stable environment for soldiers and their families.

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<sup>164</sup> *Id.* at 521.

<sup>165</sup> *United States v. Jamison*, 2 M.J. 906 (A.C.M.R. 1976).

<sup>166</sup> *Id.* at 910, n.4.

The regulations governing family housing are generally not as strict as traditional regulations within barracks. For example, the commander does not limit the amount of alcohol that can be possessed within family quarters, nor does he regulate when visitors are allowed. Although post regulations govern the exterior appearance of family quarters, no standards are set on room decoration or wall locker layout as in barracks. Most importantly, inspections of family quarters are generally limited to check in and check out.<sup>167</sup> Persons who live in a less regulated environment have an enhanced expectation of privacy. Soldiers who live with their families in government quarters generally have less regulations over the day-to-day aspects of their personal lives than soldiers in the barracks.

c. BOQ--Rank or grade does not qualify the degree to which a soldier enjoys the right of privacy.<sup>168</sup> In Bachelor Officers' Quarters (BOQ), the officer occupant can reasonably expect the same degree of privacy that civilians would enjoy in their dwelling, except for those intrusions reasonably related to legitimate governmental interest. Such legitimate government intrusions include maid service, inventories of government furnishings, or room repairs. One example of this is *United*

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<sup>167</sup> AR 210-50, *supra* note 157, para. 8-10.

<sup>168</sup> Quinn, *supra* note 159, at 496.

*States v. Hines.*<sup>169</sup> Where marijuana was found during a change of hand-receipt holder inventory of BOQ furnishings, the Army court found the no-notice inventory to be a reasonable government intrusion. Despite the accused's argument that failure to give advance notice was unreasonable, the court found the government's interest in maintaining accountability of its property and checking for misuse or damage by occupants outweighed the occupant's limited right to privacy.<sup>170</sup>

The COMA recognized the concept of privacy in the "curtilage" area of around a BOQ in the case of *United States v. Kaliski*.<sup>171</sup> In this case, the accused, an Air Force lieutenant, was suspected of engaging in adulterous relations with the wife of an enlisted man. To investigate this affair, two security policemen advanced onto his BOQ room's private patio and peeked through the curtains. Determining the accused had an expectation of privacy in his patio area, the court found the policemen had committed an unlawful, unreasonable search.<sup>172</sup> In a dissenting opinion, Judge Crawford noted prior case law regarding plain view observations and inspections of barracks demonstrated little to no privacy considerations for barracks occupants. Agreeing with

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<sup>169</sup> *United States v. Hines*, 5 M.J. 916, 919 (A.C.M.R. 1978).

<sup>170</sup> *Id.* at 920.

<sup>171</sup> *United States v. Kaliski*, 37 M.J. 105 (C.M.A. 1993).

<sup>172</sup> *Id.* at 108.

this concept, Judge Crawford concluded the majority's opinion implied that a BOQ duplex is more of a "private dwelling" than a barracks.<sup>173</sup>

Again, the reason for enhanced privacy is not related to the rank of the occupant but to the degree to which the command must regulate or supervise the soldier in his quarters. Even a young lieutenant is college-educated (or has prior enlisted service) and has most likely lived away from home before being commissioned. Compared to the typical "mosquito-wing" private, the typical "butter bar" lieutenant is more mature and has benefited from more military education and training. For these reasons, commanders find little necessity to regulate minute details of the private lives of their officers or to inspect their quarters. This relative freedom elevates the BOQ occupant's expectation of privacy over that of the barracks dweller.

d. *BEQ*--The design of the quarters affects the expectation of privacy enjoyed by the occupants. In a case involving bachelor enlisted quarters (BEQ), an old squad bay had been divided so that either two or four NCOs could be housed in a "cubicle" separated by rows of wall lockers serving as room dividers. No other partitions or curtains were permitted. These cubicles were not separated from the open passageway that ran the

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<sup>173</sup> *Id.* at 112.

length of the quarters. The company commander and first sergeant routinely walked through performing security checks. Not only could cubicles not be secured, but an NCO did not have the authority to exclude any other NCO from his cubicle. Looking at these conditions, the Navy Court of Military Review found the accused sergeant did not have a reasonable expectation of privacy in his area.<sup>174</sup> Clearly, the configuration of the living area and the controls on the occupants, even though they were NCOs, were important factors in the court's decision. In a later case, the same court affirmed a warrantless entry into the accused's BEQ room to apprehend him, finding that no arrest authorization was needed because a service member could not reasonably expect the same privacy in military barracks as in a civilian home.<sup>175</sup> In essence, the expectations of privacy in BEQs appears to be equal to that in barracks.

e. *Guest Quarters*--In the civilian world, the right of privacy extends to hotel rooms as well as "permanent" private dwellings.<sup>176</sup> Military personnel who are guests in a private hotel also enjoy privacy from the intrusion of military authority. In *United States v. Hillan*, the court found an entry

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<sup>174</sup> *United States v. Webb*, 4 M.J. 613, 615 (N.C.M.R. 1977).

<sup>175</sup> *United States v. McCormick*, 13 M.J. 900 (N.M.C.M.R. 1982).

<sup>176</sup> *Johnson v. United States*, 333 U.S. 10 (1948); *United States v. Jeffers*, 342 U.S. 48 (1951).

by a Navy shore patrolman into a YMCA room where he believed two male sailors were engaging in homosexual acts violated the Fourth Amendment because no probable cause existed.<sup>177</sup> The shore patrolman's reasonable suspicion that homosexual activity was in progress (listening outside the door, he heard "squeaking" and "bumping") was insufficient reason for the warrantless entry.

However, the military occupant of the guest quarters on post retains an expectation of privacy for searches only, not for apprehensions. In *United States v. Ayala*, the COMA found the warrantless entry into the guest quarters to apprehend a murder suspect who was outprocessing from Fort Carson in preparation for retirement to be justified.<sup>178</sup>

## 2. Off Post

a. *Overseas*--Under MIL. R. EVID. 315, a commander has the power to authorize a search for nonmilitary (private) property located off the installation in a foreign country; where covered by a treaty, the search should be conducted in accordance with its terms.<sup>179</sup> Overseas, the commander's authority reaches to cover even a search of an off-post dwelling occupied by a

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<sup>177</sup> *United States v. Hillan*, 26 C.M.R. 771, 803 (1958).

<sup>178</sup> *United States v. Ayala*, 26 M.J. 190 (C.M.A. 1988).

<sup>179</sup> MCM, *supra* note 71, MIL. R. EVID. 315.

military member.<sup>180</sup> Even in circumstances where international agreements were violated, intentionally or inadvertently, the courts have held commanders are empowered to authorize a search of the off-post quarters of military members under their command.<sup>181</sup>

An early COMA case upheld a search of an enlisted man's private apartment in France, finding the commander had tacitly authorized the search upon request of a French investigator.<sup>182</sup> However, a different result occurred concerning searches in Okinawa. Even though the 1969 Manual authorized searches by commanders in foreign countries, the COMA held that, because of an international agreement with Japan, only a judge of the Okinawan magistrate's court had authority to issue a warrant or search authorization.<sup>183</sup>

However, later cases construing the effect of international agreements have uniformly upheld a commander's authority to search off-post quarters overseas. In two cases decided the same day, the COMA held that the commanders involved were authorized

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<sup>180</sup> *United States v. Walsh*, 21 C.M.R. 876 (1956).

<sup>181</sup> *United States v. Chapple*, 36 M.J. 410 (C.M.A. 1993).

<sup>182</sup> *United States v. DeLeo*, 5 U.S.C.M.A. 148, 17 C.M.R. 148 (1954).

<sup>183</sup> *United States v. Mitchell*, 21 U.S.C.M.A. 340, 45 C.M.R. 114 (1972); *United States v. Taylor*, 21 U.S.C.M.A. 343, 45 C.M.R. 117 (1972).

to order searches of their soldiers' rented apartments on the Germany economy, even though the searches did not comply procedurally with the NATO Status of Forces Agreement (SOFA) and the Supplementary Agreement.<sup>184</sup> In a third case decided that day, the court also determined the deputy subcommunity commander (in the absence of the commander) was authorized to grant a search authorization of an off-post apartment in Germany.<sup>185</sup> More recently, the COMA upheld a commander's authorization to search off-post quarters in Italy. In this case, the commander who granted the search authorization was not in the chain of command of the accused or the person who rented the apartment; nevertheless, the court upheld the search.<sup>186</sup>

Even when soldiers reside off post, some regulations still exist to govern their conduct and activities. For example, Area Support Groups within USAREUR publish directives reminding families living on the economy that they must comply with host nation laws on noise and recycling. When soldiers fail to pay their rent or utility bills on time, the local housing office and the commander get involved in the family's financial affairs. These minimal regulations serve to lessen their expectations of privacy.

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<sup>184</sup> United States v. Morris, 12 M.J. 262 (C.M.A. 1982) and United States v. Whiting, 12 M.J. 253 (C.M.A. 1982).

<sup>185</sup> United States v. Bunkley, 12 M.J. 240 (C.M.A. 1982).

<sup>186</sup> Chapple, 36 M.J. at 413.

b. *In the United States*--The commander's authority to order a search ends at the boundary of the military reservation in the United States. As early as 1924, The Judge Advocate General of the Army opined, "Search . . . of a soldier's private dwelling, not on a military reservation, without the soldier's consent and without a search warrant [is] illegal and an unwarranted invasion of the soldier's constitutional rights."<sup>187</sup> Searches of the private dwelling of a military member located off-post in the United States is gauged by civilian standards, not military standards, and the test to be applied is whether the search was reasonable. In the absence of another legal basis, a search of an off-post dwelling without a civilian search warrant violates the Fourth Amendment.<sup>188</sup> Under MIL. R. EVID. 315, the commander's scope of authorization to search for nonmilitary property is limited to that situated on a military installation, encampment, vessel, aircraft, vehicle, or any other location under military control wherever located.<sup>189</sup>

Soldiers who live off post in the United States have considerably more freedom than barracks dwellers. Virtually no command controls regulate their living environment. With freedom

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<sup>187</sup> *Property Seized Without Warrant*, Op. JAG, Army, (undated), as digested in *Dig. Ops. JAG 1912-1940*, § 395(27).

<sup>188</sup> *Walsh*, 21 C.M.R. at 884.

<sup>189</sup> MCM, *supra* note 71, MIL. R. EVID. 315(c).

from inspections and command directed searches, the off post resident enjoys the highest expectation of privacy.

*B. The Reasons for the Differing Levels of Privacy*

1. *Historical Reasons*--Military recruits always been housed in communal-type conditions. The fundamental purpose of basic training is to take a group of individuals, break them down, and reshape them into a cohesive, trained unit capable of following orders. Specialized training in the skills of warfare is secondary to the role of indoctrination to the military environment.<sup>190</sup> The sense of individual is replaced with a sense of loyalty to the unit.

The underlying reason for the higher standard of duty, obedience, and discipline in the armed forces is the necessity for unfailing teamwork. To be ready for war anywhere and anytime requires as much teamwork as war itself. Teamwork means a high degree of discipline. Soldiers must learn to follow orders unquestioningly and unhesitatingly. Much of military training is designed to instill the direct and almost automatic obedience to orders that is necessary in peacetime and indispensable in war. Discipline as a habit can be acquired only by repeated

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<sup>190</sup> Rivkin, *supra* note 59, at 147.

performance.<sup>191</sup>

This discipline is learned, not only in military training itself, but in by working and living together in a shared, cohesive environment. A handbook for soldiers asked the rhetorical questions to the new recruit-reader: "Why must bunks be made up according to a rigid standard, and clothing arranged uniformly in the lockers? Why must you keep your person, your equipment, and your part of your living accommodations spick-and-span?"<sup>192</sup> The authors had three answers for the recruits. The first is related to discipline -- a soldier's response to standards must be automatic. Second, soldiers must learn to keep high standards of cleanliness because they live in such close association to each other. Soldiers learn how to work together by performing "housekeeping" details in the barracks and meeting unit standards. The third reason, related to the second, is that maintaining high standards of cleanliness and readiness are important to safeguard the health and safety of the unit.<sup>193</sup> Leaders are able to judge the young soldier's performance by his adherence to the military's high standards.

## 2. Regulation--More restrictions or standards are

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<sup>191</sup> MORRIS O. EDWARDS AND CHARLES L. DECKER, THE SERVICEMAN AND THE LAW, 6 (1951).

<sup>192</sup> *Id.* at 15.

<sup>193</sup> *Id.* at 16.

imposed upon soldiers living in barracks. More rules are necessary when many persons occupy a shared living arrangement. Under communal-type conditions, rules are needed to provide security to occupants and their possessions and to ensure occupants maintain acceptable levels of sanitation. Where commanders retain more administrative controls on the living environment, the soldiers will have a lower expectation of privacy.

3. *Familial Privacy*--Although the architectural design of family quarters differs from location to location, only one family lives in one set of quarters. Dwellings may be joined, as in a duplex or even several different apartments in a "stairwell." Separate apartments may share a patio with one or more other apartments or a common-area basement for storage or shared laundry room. However, even where families share certain amenities, each family's area remains separate and distinct from others. Families do not have to share private living space with other families. The family unit is intact and self-contained.

Another reason for the enhanced level of privacy in family quarters is the presence of non-military personnel living there. Case law on privacy in family quarters fails to discuss, as a factor affecting privacy, that dependents live there with the military member. Although unstated, the courts recognize the exigencies of military necessity to enter family quarters are

diminished when families live there. Although not always the case, soldiers with families are generally older, have more time in service, and are more stable than first-term single soldiers. The stability and order of family life obviates the command's need to regulate those living conditions. The command's need to maintain order and discipline must be weighed against the family members' rights to privacy from command intrusion.

4. *Private Living Space*--Although on-post quarters are not as spacious as most off-post houses, family quarters provide more living space to its occupants than barracks occupants enjoy.<sup>194</sup> Establishing a zone of privacy requires the ability to exclude others and the ability to secure the personal area from public view or thoroughfare. The size of the personal living space impacts on the amount of privacy enjoyed. The old standard for barracks living space was 90 square feet per soldier.<sup>195</sup> The USAREUR standard -- 110 square feet for junior enlisted, 220 square feet for NCOs<sup>196</sup> -- has been adopted recently as the Army's new standard for new barracks construction/renovation.<sup>197</sup> As the amount of private living space increases, the greater the soldier's expectation of privacy.

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<sup>194</sup> AR 210-50, *supra* note 157, para. 4-3.

<sup>195</sup> Paulette V. Walker, "Slowly, Barracks Turn From Hovels to Homes," *Army Times*, Feb. 21, 1995, at 14.

<sup>196</sup> SSQOL Policy Memo, *supra* note 13, at 3.

<sup>197</sup> Walker, *supra* note 195, at 13.

5. *Military Necessity*--When the majority of the unit lives in the barracks, the chain of command has a greater need to intrude there to find soldiers for details, pass messages, or notify soldiers to prepare for no-notice deployment or alert. Because the large concentration of barracks occupants are junior soldiers, the chain of command finds it necessary to spend more time with the young soldier training and coaching him. Many, unused to living on their own for the first time in their lives, require "mothering" in a style that can only be provided by a squad leader. This need for discipline is the military necessity discussed by the courts to explain why less privacy is reasonable in the military setting.

#### V. Analysis of Privacy Interests Under SSQOL

The stated purpose of SSQOL is to allow soldiers greater privacy in their quarters.<sup>198</sup> To create equality to family housing occupants, SSQOL grants barracks dwellers privileges similar to those enjoyed by soldiers living in other quarters on post.. Strongly discouraged from intruding on the privacy of the occupants, the chain of command is admonished to minimize or eliminate inspections in soldiers' rooms. The commander's omnipresent CQ is banished, and with him, the requirement to sign visitors in and out or restrict their visits to certain hours,

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<sup>198</sup> SSQOL Policy Memo, *supra* note 13, at 4.

locations, or conditions.

#### A. Privileges Affect Privacy

With the possible exception of the limitation on inspections, each privilege -- when viewed individually -- does not in itself create the expectation of privacy within a person's quarters. To the individual, the number of privileges granted and the extent to which the freedoms apply serve to fashion his subjective perception of the privacy he expects in his living environment. Only when the conditions are aggregated and viewed in their totality can an outsider judge whether these interests create an objectively reasonable expectation of privacy. Generally, the more freedoms, the greater the reasonable expectation of privacy.

When persons live in a highly regulated environment, they subjectively have a reduced expectation of privacy.<sup>199</sup> Even with some regulations controlling their environment, soldiers and families living in family quarters on post still enjoy a greater expectation of privacy than soldiers living in the traditional barracks environment based on the privileges given and the resulting lack of control.

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<sup>199</sup> United States v. Bickel, 30 M.J. 277, 285 (C.M.A. 1990).

B. *How SSQOL Affects Privacy Interests in the Barracks*

If SSQOL remains in substantially its present form, it will dramatically enhance soldiers' Fourth Amendment expectations of privacy in the barracks. Soldiers who are granted more privileges in the barracks will reasonably believe the commander has given them more privacy. With one of the spoken reasons for SSQOL being to equalize treatment of single soldiers with married soldiers, equal treatment would include the reasonable expectation of privacy equal to that enjoyed by soldiers living in family quarters and BOQs.

Taken as a whole, the SSQOL program's privileges minimize command supervision over soldiers' activities in the barracks. To a certain extent, separate SSQOL freedoms affect the individual's expectation of privacy. For example, the soldier's privilege to decorate his room as desired indicates the command's willingness to give the soldier more freedom and responsibility to maintain his quarters, traditionally the responsibility of the commander. Decreasing the number of housekeeping rules (i.e., empty wastebaskets daily, sweep floors weekly) lessens the command's need to supervise the soldier's compliance with those rules. Surrendering control over minute details of the soldier's living environment (i.e., dress right, dress wall locker layouts) tells the soldier that the command is willing to allow the soldier personal discretion in how to live. Given the utmost

freedom within their rooms, soldiers are cautioned not to abuse alcohol or abuse visitation privileges; however, the command no longer has a CQ to monitor their compliance. In essence, the lack of a CQ allows the soldier to do anything he wants to do in his barracks room, defying even the remaining minimal rules, without much chance of getting caught. This enhances the soldier's belief in his rights to privacy within his barracks room.

The COMA recognized in *Middleton* and *Mitchell* that the military's increased respect for the privacy of individual soldiers, particularly changes from open bay barracks to semi-private barracks rooms, causes a corresponding increase in the individual's legitimate expectation of privacy in the barracks room.<sup>200</sup> With SSQOL, USAREUR has recognized that soldiers are deserving of even more privacy interests in barracks. This program has not gone unnoticed.

In their brief to the COMA on behalf of appellant, McCarthy's counsel cited USAREUR's SSQOL program as an example that the military has taken active steps to increase soldiers' privacy interests in the barracks.<sup>201</sup> After examining certain provisions in General Saint's original program, McCarthy's brief

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<sup>200</sup> *Middleton*, 10 M.J. at 128, n.8; *Mitchell*, 12 M.J. at 265.

<sup>201</sup> Appellant's Brief at 9, *United States v. McCarthy*, 38 M.J. 398 (C.M.A.) (No. 67,883).

concluded, "Clearly, at least in USAREUR, the individual soldier's expectation of privacy in his or her barracks room is on a substantially equal level as the expectation of privacy in on-post family housing and BOQs."<sup>202</sup>

In its decision, the COMA did not address appellant's arguments concerning the USAREUR SSQOL program. Undoubtedly, the court regarded the USAREUR program as irrelevant to the expectation of privacy of an Army soldier living in the Little Rock Air Force Base dormitory. However, the COMA did enumerate the regulations which applied to occupants living in the Little Rock dormitory, noting that these types of restrictions are what differentiated it from *Payton*'s "home."<sup>203</sup>

#### C. *Home is Where the Army Sends You*

In *McCarthy*, the COMA decided that the barracks is not a "home" for Fourth Amendment apprehensions.<sup>204</sup> However, the Fourth Amendment protects not just a physical place, but personal privacy regardless of a person's living quarters. A closer analysis yields the conclusion that a military barracks is a home within the meaning of *Payton*.

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<sup>202</sup> *Id.* at 10.

<sup>203</sup> *McCarthy*, 38 M.J. at 403.

<sup>204</sup> *Id.*

The decision in *Payton* was limited to instances when a suspect was being arrested in his own home. The Supreme Court has continually interpreted the constitutional boundaries of protection from unreasonable searches and seizures in a manner consistent with evolving societal norms. Even in early cases, the Supreme Court ruled that the protections of the Fourth Amendment "apply to all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of life."<sup>205</sup> The Court subsequently ruled that a warrantless arrest of a person is a seizure required to be reasonable.<sup>206</sup> As societal norms and technology evolved, the Court recognized that the Fourth Amendment protects far more than the physical boundaries of a person's home. Indeed, the Court held that governmental conduct in listening to and recording by electronic devices a person's telephone conversation in a public phone booth without a warrant constituted an unreasonable search and seizure violative of the Fourth Amendment. Even though public telephone booths are not constitutionally protected places, the Court held that the Fourth Amendment "protects people, not places."<sup>207</sup> Furthermore, "what [a person] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected."<sup>208</sup>

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<sup>205</sup> *Boyd v. United States*, 116 U.S. 616, 630 (1886).

<sup>206</sup> *Beck v. Ohio*, 379 U.S. 89 (1964).

<sup>207</sup> *Katz*, 389 U.S. at 351.

<sup>208</sup> *Id.*

Although *Payton* recognized that the physical entry of a traditional dwelling place is the "chief evil against which the wording of the Fourth Amendment is directed,"<sup>209</sup> a single family dwelling is not the only protected place under the Fourth Amendment. The Fourth Amendment focuses on protection of personal privacy and not just the physical dwelling. The test is "whether the person who claims the protection of the [Fourth] Amendment has a legitimate (that is, a reasonable) expectation of privacy in the invaded place."<sup>210</sup> For an expectation of privacy to be reasonable, the accused must have exhibited an actual subjective expectation of privacy and the accused's expectation must be one that society is prepared to recognize as objectively reasonable.<sup>211</sup>

A person can have a reasonable expectation of privacy in another person's home. In *Minnesota v. Olson*, the Supreme Court recognized an individual's status as an overnight guest in another's home is enough to confer a expectation of privacy that society would recognize as reasonable.<sup>212</sup>

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<sup>209</sup> *Payton*, at 585.

<sup>210</sup> *Rakas v. Illinois*, 439 U.S. 128, 143 (1978).

<sup>211</sup> *California v. Ciraolo*, 476 U.S. 207, 211 (1986); *Katz*, 389 U.S. at 347.

<sup>212</sup> *Minnesota v. Olson*, 495 U.S. 91, 96-97 (1989).

In its *McCarthy* decision, the COMA did not address *Minnesota v. Olson*, even though a soldier is a type of "guest" in military barracks. Both government quarters and a private home are the property of someone else. The "host" offers the convenience of a place to stay as a type of charity. Both places have rules, although courtesy more than regulation is usually the norm in someone's home. Each "guest" who carries his private personal property with him during his stay does not expect the host to rifle through those belongings. In both places, the "guest" can reasonably expect intrusions by the host into the area where he is staying. If the Supreme Court recognizes that overnight guests have a reasonable expectation of privacy, the soldier who is a "guest" of the Army during his enlistment tour may have at least an equivalent expectation of privacy in his barracks room.

More importantly, expectations of privacy for searches and apprehensions should not differ based solely on the reason for the intrusion. Analyzing the reasons for entry into barracks rooms, the Army Court of Military Review in *McCarthy* had concluded the intrusion into a barracks room was "minimal" compared to the greater intrusion necessary for a search, citing a footnote in *Payton*.<sup>213</sup> However, the *Payton* footnote and surrounding text comes from the New York Court of Appeals

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<sup>213</sup> *United States v. McCarthy*, 34 M.J. 768, 772 (A.C.M.R. 1992) and *Payton*, 445 U.S. at 580 n.13.

decision that originally upheld appellants' conviction in *Payton*. A thorough examination of the Supreme Court's opinion reveals the Court found this reasoning unpersuasive as a distinction without a difference:

The majority of the New York Court of Appeals . . . suggested that there is a substantial difference in the relative intrusiveness of an entry to search for property and an entry to search for a person . . . . It is true that the area that may be legally searched is broader when executing a search warrant than when executing an arrest warrant in the home . . . . But the critical point is that any differences in the intrusiveness of entries to search and entries to arrest are merely one of degree rather than kind.<sup>214</sup>

Thus, the Supreme Court rejected the same analysis by the New York Court of Appeals upon which the ACMR relied.

The COMA, however, correctly cited *Payton* for the proposition that "the intrusion involved in an arrest and the intrusion involved in a search are indistinguishable when either occurs in the 'home.'"<sup>215</sup> Logically, the expectations of privacy from unreasonable intrusions for search or arrest in the home

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<sup>214</sup> *Payton*, 445 U.S. at 589.

<sup>215</sup> *McCarthy*, 38 M.J. at 400.

should be equal. The COMA held no reasonable expectation of privacy exists in barracks rooms for apprehensions, but it did not justify why there is an expectation of privacy in barracks rooms for searches.

Regardless of the correctness of the COMA's decision, McCarthy's holding applies to apprehensions in the "old Army" barracks. Under SSQOL, soldiers live in an environment where fewer regulations govern their living conditions. These new freedoms create greater expectations of privacy in the new soldier quarters. If instead of a Little Rock Air Force Base dormitory, McCarthy had lived in USAREUR's single soldier quarters of today, the COMA could have found an expectation of privacy for apprehensions under those living conditions.

In McCarthy, the COMA enumerated the differences in Payton's "home" and McCarthy's "home," as regulated by the Little Rock Air Force Base standards for dormitory rooms:

Appellant was assigned his room; he did not choose it. Appellant was assigned his roommate; he did not choose him. Appellant could not cook in his room, have overnight guests, or have unaccompanied underage guests. Appellant knew he was subject to inspection to a degree not contemplated in private homes. . . . The CQ had a key to the room and was authorized to enter

the room on official business.<sup>216</sup>

The written dormitory standards applying to McCarthy's two-person room included other rules, such as requiring shoes to be polished and lined up under the bed, authorizing inspections, and giving the CQ room keys and allowing unlimited access to the room.<sup>217</sup>

More regulations governed McCarthy's dormitory than would govern his USAREUR barracks room under SSQOL. Under SSQOL, McCarthy could cook in his room. McCarthy would not be required to keep his belongings in a "dress right, dress" room layout. No CQ would have a key to let the security policeman into McCarthy's room; in fact, no CQ would be on duty at all. With no CQ, McCarthy could easily choose, with impunity, to ignore the visitation rules on minors or overnight guests. Although not entirely free to choose a roommate, McCarthy's wishes concerning a smoking or nonsmoking roommate would be accommodated. Importantly, McCarthy's chain of command would not conduct routine room inspections to the extent permitted by the Little Rock dormitory standards. The number of freedoms and the extent of the freedom within his quarters would have enhanced McCarthy's subjective expectation of privacy. Likewise, the COMA would find an objectively greater expectation of privacy under SSQOL conditions.

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<sup>216</sup> *Id.* at 403.

<sup>217</sup> McCarthy, 38 M.J. at 400.

SSQOL possesses the potential to change existing military law on the seizures of soldiers living in barracks. SSQOL has increased single soldiers' expectations of privacy in their soldier quarters. SSQOL's greater expectations of privacy, under the right fact scenario, could soon result in warrants being required for seizures of soldiers living in barracks.

#### *D. Equal Protection, Equal Privacy?*

Supporters of single soldier rights may argue that the distinctions in privacy among service members denies barracks dwellers equal protection of the law under the Fifth Amendment. R.C.M. 302(e) recognizes a warrant or authorization is needed to apprehend soldiers in "dwellings, on or off a military installation, such as single family houses, duplexes, and apartments."<sup>218</sup> Similarly, the Army and Air Force Courts of Military Review have recognized that similar protections apply to BOQs, as well as on-post family housing.<sup>219</sup> However, single enlisted soldiers do not have this protection living in the barracks where there is no need to obtain a warrant or authorization to apprehend a soldier.<sup>220</sup> Arguably, single

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<sup>218</sup> MCM, *supra* note 71, MIL. R. EVID. 302(e).

<sup>219</sup> Kaliska, 37 M.J. at 108, 112; Hines, 5 M.J. at 916.

<sup>220</sup> McCarthy, 38 M.J. at 403.

enlisted soldiers living in the barracks are denied equal protection against governmental intrusions for apprehensions. Constitutional protections afforded to a service member do not depend upon marital status, commission, rank, or living location. The Fourth Amendment's protection of "people, not places" should apply to a soldier wherever he lives.<sup>221</sup>

However, such arguably discriminatory treatment can survive a constitutional challenge under the Equal Protection Clause if the government can show a rational relationship between the disparity of treatment and some legitimate governmental purpose.<sup>222</sup> The Supreme Court has held that a classification can be upheld against equal protection challenge if there is "any conceivable state of facts that could provide a rational basis" for the disparate treatment.<sup>223</sup>

If challenged on equal protection grounds, the military could argue that warrantless apprehensions in the barracks are rationally-based. The legitimate governmental purpose for making warrantless apprehensions of single soldiers in barracks is to maintain discipline and unit readiness as well as to ensure the health and safety of other soldiers living in close barracks quarters. The rational basis for treating family housing

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<sup>221</sup> Katz, 389 U.S. at 351.

<sup>222</sup> Heller v. Doe by Doe, 113 S.Ct. 2637, 2642 (1993).

<sup>223</sup> *Id.*

residents differently from barracks dwellers would be that an warrantless apprehension in family housing invades familial privacy. Another reason supporting disparate treatment is that warrantless apprehensions in the barracks are necessary to ensure the safety of the other soldiers living together in a communal environment in the barracks.

However, this rationale applies to traditional-style barracks. The more the barracks resemble family quarters, the less rational the basis for a legal distinction between the barracks and family quarters. When single soldiers live in semi-private conditions, just as families do in a communal "stairwell," the reasons for disparate treatment may not be rational enough to withstand constitutional challenge.

## VI. Recommendations

Clearly, the days are past where soldiers out of basic training will be forced to live for the duration of their enlistment in open-bay barracks. To entice young people to join the military and later reenlist, the services recognize the importance of an attractive lifestyle. With the design of soldier quarters evolving more toward more private living arrangements, SSQOL freedoms in these "new barracks" must be evaluated for their impact on expectations of privacy.

However, soldiers' privacy interests must yield to the commanders' greater need to maintain the highest levels of discipline and readiness. Currently under the law, the commander of a deployed tactical unit must have probable cause to search his soldier's wall locker, while a high school principal can order the search of a high school student's wall locker upon mere reasonable suspicion.<sup>224</sup> Even the COMA has recognized, "The need for military discipline parallels and in many respects exceeds the need for school discipline."<sup>225</sup> The courts consistently recognize and accept military necessity as a legitimate intrusion under the Fourth Amendment.<sup>226</sup> Judge Wiss's concurring opinion in *McCarthy*, suggesting that no expectation of privacy exists in the barracks, opens the door for a change in the military law governing searches.

The Fourth Amendment proscribes only "unreasonable" searches and seizures. What's "unreasonable" in civilian society might be eminently "reasonable" in a military environment.<sup>227</sup> After

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<sup>224</sup> Major Kevin H. Winters, *A Proposed Amendment to the Military Rules of Evidence on Inspections and the Probable Cause Search Standard for Operational Units*, 40 NAVAL L. REV. 143 (1992).

<sup>225</sup> *McCarthy*, 38 M.J. at 403.

<sup>226</sup> See *United States v. Poundstone*, 22 C.M.A. 277, 46 C.M.R. 277 (1973), noting what government conduct may be reasonable in a war zone may not be reasonable in peacetime; *United States v. Hessler*, 4 M.J. 303 (C.M.A. 1978); *United States v. Stuckey*, 10 M.J. 347 (C.M.A. 1981); *United States v. Morris*, 28 M.J. 8 (C.M.A. 1989).

<sup>227</sup> *Vowell*, *supra* note 161, at 285.

COMA's decision in *Brown*<sup>228</sup> in 1959, the Committee on the Uniform Code of Military Justice unsuccessfully proposed to Congress an amendment to give commanders authority to order a search whenever they deemed it necessary "to safeguard the health and security" of their commands.<sup>229</sup> Congress rejected this overbroad amendment. A more narrowly tailored proposal recently argued by a military lawyer calls for a change to the Military Rules of Evidence to allow command directed searches of "operational" or deployable units without a showing of probable cause.<sup>230</sup> The Supreme Court's reasoning in *New Jersey v. T.L.O* suggests the Court would be willing to accept the military's need for discipline would be "reasonable" under the Fourth Amendment to justify a lower Constitutional standard for searches.<sup>231</sup> The higher state of tactical readiness necessary in units that could be deployed at any time to military operations any where is the ultimate military necessity.

Whether soldiers living in barracks should be granted privacy interests equal to their married counterparts is an important decision that should be made by commanders, not lawyers. To that end, the Office of the Deputy Chief of Staff,

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<sup>228</sup> *Brown*, 10 U.S.C.M.A. at 482.

<sup>229</sup> Report to the Secretary of the Army by the Committee on the Uniform Code of Military Justice Good Order and Discipline in the Army 89-90 (18 Jan. 1960).

<sup>230</sup> *Winters*, *supra* note 224, at 151.

<sup>231</sup> *New Jersey v. T.L.O*, 469 U.S. 325 (1981).

Personnel (DCS PER) and, within the Army, the Army Family & Community Support Center, the proponent for single soldier programs within the Army, should ensure the legal implications of privacy interests are considered at every stage of the decision-making cycle on single soldier issues. All staff actions and programs within the Department of the Army must be closely coordinated with the Office of the Judge Advocate General for legal consistency on privacy issues.

*A. Recommended Changes to the Manual for Courts-Martial*

To minimize expectations of privacy under SSQOL, changes are necessary in the Military Rules of Evidence and the Rules for Courts-Martial. To clarify that "barracks" are now called "soldier quarters," R.C.M. 302 should be amended to include the new term "soldier quarters" (in addition to the word "barracks") as a listed area not requiring prior authorization for apprehensions. In the area of inspections, MIL. R. EVID. 313 on inspections should be amended to specify that a commander need not have command responsibility over the barracks building to possess authority to inspect his soldiers and their living areas in the barracks. MIL. R. EVID. 315 on probable cause should be amended to reflect that the commander of the soldier, as well as the commander "who has control over the place," is empowered to authorize a search of the soldier's barracks room. These changes will bolster the tactical commander's legal authority within the

barracks.

B. Recommended Changes to the SSQOL Program

In response to the criticisms of SSQOL and its legal concerns, CINCUSAREUR should consider modifying the program. The most important, immediate, change that needs to be made is that the section concerning inspections in the current SSQOL policy memorandum should be amended to broaden its scope to that allowed in MIL. R. EVID. 313(b).<sup>232</sup> This change will obviate future defense counsel suppression motions arguing that the scope of the local commander's inspection authority was withheld. The SSQOL policy memorandum should be amended to specify that "soldier quarters" remain "barracks" for the purpose of R.C.M. 302 apprehensions.

Until MIL. R. EVID. 315 is amended to allow the commander of the soldier to authorize a search of his barracks room, an alternative for CINCUSAREUR to consider is to allow tactical commanders to sign for their soldiers' rooms from the base support battalion's housing office. The company/battery commander could then hand-receipt the rooms and furnishings directly to the soldier. By using this method, the tactical commander will have "control over the place" within the meaning

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<sup>232</sup> See *infra*, notes 80-85 and accompanying text.

of MIL. R. EVID. 315, empowering him to authorize a search upon probable cause.

In order to better police the problem of enforcement of overnight or underage visitors, commanders should be allowed to implement CQs on a "no-notice" basis within soldier quarters. The decision on when and how to schedule CQs should be made by the battalion commander upon request of the company/battery commander. On an unannounced basis (similar to the way unit commanders schedule urinalysis inspections), company/battery commanders could schedule a noncommissioned officer to serve one night on duty as barracks CQ. During his tour, the CQ would monitor compliance with the visitation policy and note any other problems (such as noise, overindulgence in alcohol, safety, and security of common area property) for the commander. Aware that a CQ might be scheduled to "supervise" their evening in the barracks, soldiers might become less inclined to engage in rowdy behavior or have sleep-over guests on a regular basis. As an alternative, units that train using a "Red, Amber, Green" cycle could implement a CQ during those times when a high level of readiness for deployment is practiced.<sup>233</sup>

Local commanders -- battalion and brigade -- should examine the inspection policy within their commands to determine whether

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<sup>233</sup> For a discussion of "Red-Amber-Green" training cycles, see DEP'T OF ARMY, FIELD MANUAL 25-101, BATTLE FOCUS TRAINING, (Sep. 1990).

a consistent inspection policy among their subordinate units would be beneficial to the discipline of the command. Related to this, handbooks for occupants of soldier quarters should clearly specify that soldier rooms are subject to search, based upon probable cause, or unannounced inspection by members of the chain of command or the base support battalion, to include the use of drug detection dogs. The occupant handbook should clearly convey to soldiers that SSQOL is a privilege, not an entitlement, and that soldiers who violate or abuse the policy are subject to UCMJ action, if warranted, or having these privileges curtailed.

CONUS installations or units considering whether to implement SSQOL should consider very carefully the ramifications of such a policy. As an alternative to immediate, full-blown implementation, commands should consider a "spartan" version, such as granting SSQOL privileges to soldiers upon promotion to the rank of corporal or specialist (pay grade E-4). Soldiers who achieve this rank will have demonstrated the requisite maturity to handle the freedoms that SSQOL provides.

## VII. Conclusion

"It was but a small step to declare the commander a virtual trespasser in his own barracks."<sup>234</sup>

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<sup>234</sup> Lopez, 35 M.J. at 43.

In the book *The Long Gray Line*, the author describes in vivid detail American military barracks life in Germany during the 1970s. Drug, race, and morale problems caused by the Vietnam War were exacerbated by new barracks freedoms given to soldiers. The result was an atmosphere of chaos. Barracks were dark, dangerous places where officers feared to enter alone.<sup>235</sup> Many of today's senior officers distrust SSQOL, remembering those troubled times when undisciplined soldiers took control of the barracks from the chain of command.

However, society has changed and along with it the type of young recruit coming into the service. The armed forces' evolution from the draft to an all-volunteer force brought about changes in philosophy, values, and attitudes. The training philosophy needed to train draftees in wartime applies no longer to smarter, better-educated service members who willingly join the military in peacetime. Winners of the Cold War, U.S. forces stationed in Europe need not be ready at a moment's notice to fight the invading Soviet forces. Given today's atmosphere and the higher caliber of service member, the traditional "green blanket"-style discipline mentality seems as dated as C-rations and brown boots.

On the other hand, the chain of command must not completely abandon its obligation to maintain good order and discipline

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<sup>235</sup> RICK ATKINSON, *THE LONG GRAY LINE* 174 (1989).

within the barracks. Soldiers want and need discipline in their lives or they would not have entered military service. As the program stands now, SSQOL requires soldiers in the barracks to police and discipline themselves. SSQOL has transferred the commander's ownership of the barracks to the troops<sup>236</sup>. This must change. Military discipline requires enforcement of standards by the chain of command. SSQOL must be tempered so the commander's need to enforce good order and discipline in the unit outweighs the soldier's expectations of privacy. These changes in SSQOL are necessary to ensure that privileges do not degenerate into abuses. Ownership of the barracks must return to the commander.

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<sup>236</sup> See *supra* note 1.

APPENDIX A

DEPARTMENT OF THE ARMY  
HEADQUARTERS, UNITED STATES ARMY, EUROPE, AND SEVENTH ARMY  
THE COMMANDER IN CHIEF  
UNIT 29351  
APO AE 09014

AEAGA-MW (600-19a)

1 April 1994

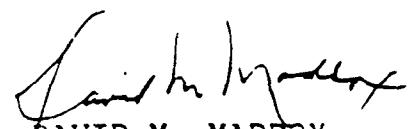
MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Single Soldier Quality of Life Policy

This memorandum expires 1 year from date of publication.

1. Commanders and noncommissioned officers are continuing to improve the quality of life for single soldiers in USAREUR. By treating soldiers equally, regardless of marital status, leaders are making the single soldier quality of life (SSQOL) policy work.
2. Inspection teams from the Office of the Inspector General, HQ USAREUR/7A, recently confirmed the SSQOL progress that has been made up to now; the inspection also revealed a need to increase SSQOL awareness. As a result, training in SSQOL has been given added emphasis in the enclosed updated policy. In addition, commanders are now required to issue written procedures for implementing SSQOL policy standards, prohibit pets, and assign full-time soldier-quarters managers.
3. To ensure the SSQOL policy works, leaders must plan for the cost of putting it into effect. Nonappropriated funds can be used only as prescribed in AR 215-1 and only after certifying in writing that appropriated funds are not available. Leaders should note, however, that many improvements can be made at little or no cost.
4. You will find that some aspects of the SSQOL policy allow for command flexibility in implementation. Use initiative and good judgment to determine how to make the SSQOL policy work in your unit. When the USAREUR Command Sergeant Major and I visit your units, we will ask what you have done to improve the lives of your single soldiers.

Encl

  
DAVID M. MADDOX  
General, USA  
Commander in Chief

DISTRIBUTION:  
Cmd level A (USAREUR Pam 25-31)

## SINGLE SOLDIER QUALITY OF LIFE GUIDANCE

### SECTION I POLICY

#### 1. SOLDIER TREATMENT

Commanders will-

- a. Treat soldiers equally, regardless of marital status, except as regulated by USAREUR policy. Some exceptions may apply to single soldiers because they live in soldier quarters (para 2) (for example, storing privately owned firearms).
- b. Eliminate "hey you" details by establishing "on call" duty rosters listing all soldiers eligible for extra duties.
- c. Enforce "prime time" (USAREUR Reg 350-1, para 1-25b).
- d. Ensure single soldier issues are addressed at area support group (ASG) and base support battalion (BSB) townhall meetings.
- e. Ensure a fair representation of single soldiers attends the USAREUR Family Force Forum and the HQDA Army Family Action Plan Forum. The Deputy Chief of Staff, Personnel, USAREUR (DCSPER), will fund this action.
- f. Ensure single soldiers know about and are included in area outreach programs. These programs include Army Community Service programs, the Army sponsorship program, and installation volunteer activities.
- g. Conduct commander, command sergeant major, and first sergeant seminars at BSBs and senior tactical units to educate leaders on single soldier issues.
- h. Ensure all assigned personnel (single and married) are briefed on the Single Soldier Quality of Life (SSQOL) policy.
- i. Require all soldiers at battalion and lower level to watch the videotape entitled "CINCUSAREUR on Single Soldier Initiatives."
- j. Establish written procedures for implementing unit SSQOL policy and standards at battalion and lower level.
- k. Not issue policy placing restrictions on soldiers simply because they live in soldier quarters (para 2), except as issued or approved by HQ USAREUR/7A. Examples are restrictions on-
  - (1) Storing and consuming alcoholic beverages.
  - (2) Owning privately owned vehicles.

Encl, memo, HQ USAREUR/7A, AEAGA-MW, 1 Apr 94

(3) Requiring soldiers authorized to live off post to maintain quarters on post.

(4) Limiting room decoration (bedding, furniture, paint, wall-lockers).

(5) Arranging wall-lockers.

## 2. SOLDIER QUARTERS (Formerly Called Barracks)

Commanders will-

a. Assign full-time soldier quarters (SQ) managers and centralize SQ management in a manner similar to management of family housing. The USAREUR goal is to centralize SQ management at local housing offices. Until SQ management automation is fielded and local housing offices are appropriately staffed to manage SQ, ASG commanders may approve centralized SQ management at battalion level or higher using existing resources. (The Office of the Deputy Chief of Staff, Engineer, HQ USAREUR/7A, is the proponent of this policy.) SQ management responsibilities include the following:

(1) Responding to chain-of-command concerns.

(2) Ensuring assignment and termination of SQ.

(3) Conducting pre-termination, termination, and check-in inspections of SQ.

(4) Maintaining accountability of SQ furniture.

(5) Preparing statements of charges and other property adjustment documents for damaged or lost Government property.

(6) Following-up on work orders.

(7) Ensuring SQ occupants are aware of the procedures for submitting work orders during and after duty hours.

(8) Maintaining SQ key control.

(9) Collecting occupancy data for housing reports and for justifications for issuing statements of nonavailability.

b. Ensure BSB commanders appoint area, building, and floor coordinators when the housing office manages SQ. Battalion or brigade commanders will appoint coordinators when SQ are managed at the battalion level or higher. Commanders will assign the responsibilities of building and floor coordinators to SQ occupants as extra duties. These responsibilities will parallel those of family-quarters coordinators. Area coordinators periodically will inspect buildings and work with building coordinators to solve problems. Building coordinators, who normally are senior-ranking

occupants, will ensure SQ are properly cared for and remain high-quality places to live. Building coordinators will work with SQ managers, floor coordinators, and other local officials in meeting their responsibilities.

c. Form an SQ advisory council comprising representatives from the chain of command, members of pertinent staff offices and ASG and BSB agencies, and SQ residents. Commanders will ensure single soldiers are adequately represented in the council. The SQ advisory council will meet to discuss problems and plan solutions.

d. Establish a written SQ policy that clearly defines occupant responsibilities in the SQ room and in common areas. Commanders will be specific about standards of cleanliness. Each soldier will receive a copy of the policy when signing for a room.

e. Allocate living space in rooms with private or semiprivate baths as follows:

(1) Two specialists (SPCs), corporals (CPLs), or below, or any combination thereof, per room.

(2) One sergeant (SGT) or staff sergeant (SSG) per room.

f. Allocate living space in buildings with central baths as follows:

(1) Two SPCs, CPLs, or below, per room when enough space exists.

(2) One SGT or SSG per room when enough space exists.

(3) SPCs, CPLs, and below must receive at least 110 net square feet of living space each.

(4) SGTs and SSGs must receive at least 220 net square feet of living space each.

(5) All available SQ space must be used to increase space and personal privacy without issuing statements of nonavailability.

g. Not house senior noncommissioned officers (NCOs) (sergeants first class and above) in SQ. Commanders will house senior NCOs in senior enlisted quarters or in private rental housing.

h. Assign soldiers to rooms based on smoking and nonsmoking preferences. If a smoker and a nonsmoker must room together, the room will be designated nonsmoking.

i. Permit SQ residents to decorate and arrange rooms as they desire, provided decorations are not offensive and roommates agree on the decor. Paint, which is available through supply channels, will be provided to SQ occupants. SQ occupants desiring to use colors that are not normally available through supply channels will buy the paint at their own expense. Occupants will return rooms to directorate of engineering and housing (DEH) standards before they clear quarters.

j. Use good judgment in conducting inspections. SSQOL initiatives enhance morale by allowing soldiers greater privacy and wider latitude in what they can do in their quarters. Commanders will-

(1) Conduct room inspections only to the extent needed to ensure occupants maintain neatness, cleanliness, health, safety, and security standards and do not infringe on the rights of other occupants. Commanders may need to inspect rooms not meeting these standards more frequently than they inspect other rooms until standards are met.

(2) Not conduct late-night or weekend room "walk-throughs," except under special conditions that create a need to do so. Security checks of common areas are allowed.

(3) Conduct personal military clothing, organization clothing and individual equipment, or TA-50 gear accountability and serviceability inspections outside soldiers rooms. When possible, commanders will conduct these inspections at a location other than the SQ.

k. Allow no pets (except fish) in SQ.

l. Allow soldiers to have privately owned microwave ovens in their rooms when enough electrical power exists.

m. Install kitchenettes on a basis of not more than one per floor and not less than one per building. The appropriate number will depend on the commander's analysis of occupant needs relative to the availability of local facilities. Each kitchenette will have at least a four-burner stove-top, a sink, storage cabinets, a heavy-duty microwave oven, a refrigerator, and a countertop. Each building will have at least one heavy-duty ice machine. In adequate or recently renovated SQ, this action may be paid for with ASG Operation and Maintenance, Army (OMA), funds. Kitchen items and equipment may be funded by ASG nonappropriated funds (NAF) if the commander provides written certification that appropriated funds are not available. Commanders will explore the availability of excess equipment to meet their needs. Kitchen space and appliance hook-ups will be included in lousy barracks renovation.

n. Improve and maintain gamerooms and separate them from television/reading rooms. Commanders will restrict gamerooms and television/reading rooms primarily to basements, attics, or other areas that do not take up billeting space. Commanders will have a weightroom provided a structurally suitable location exists. Existing billeting space will not be used for a weightroom. In adequate or recently renovated SQ, this action will be paid for with ASG OMA funds when possible. Items and equipment may be funded by ASG NAF if the commander provides written certification that appropriated funds are not available.

o. Aggressively pursue completion of the consolidated mailroom program. Completing the program would be paid for using ASG OMA funds when possible. The DCSPER (AEAGA-MW) will monitor the program.

p. Ensure DEHs respond quickly to work orders submitted by SQ billeting managers. SQ work orders are a top funding priority (second only to emergencies) for real property maintenance account funding. This action will be paid for with ASG OMA funds. The Office of the Deputy Chief of Staff, Engineer, HQ USAREUR/7A, will monitor this action.

q. Except where buildings were designed to provide for such activities, move administrative or logistic functions, except linen closets, out of the SQ. If it is not feasible to remove the administration office from the SQ, commanders will move it to a basement or attic with separate entrances. The intent is to keep SQ occupants from being intruded on by unit administrative and logistic personnel.

r. Install long-distance telephones (such as AT&T) in each SQ if host nation telephone service (such as TELEKOM in Germany) cable pairs are available.

s. Install official military telephones on each floor of the SQ for local use. Where possible, separate numbers will be installed on each floor. When cable pairs are limited, extension telephones will be installed. Installation will depend on the availability of lines to the Defense Switched Network (DSN) switch and military cable pairs.

t. When such services are available, permit soldiers to contract with a host nation telephone service (such as TELEKOM) for private telephones in their rooms. Soldiers desiring such service will be responsible for the associated costs.

u. Include provisions for conduits for telephone and cable television cabling to each room when planning SQ renovation and new construction. Where cable service is available, soldiers desiring individual hook-ups in their rooms will be responsible for associated costs.

v. Eliminate charge of quarters (CQ), except where a valid operational requirement exists. A senior tactical commander must approve exceptions.

w. Request Deputy Chief of Staff, Engineer, USAREUR, approval on plans to renovate, revitalize, or construct SQ. The approval will ensure designs meet current design standards.

x. Eliminate visiting restrictions, but continue to require nonmilitary guests under 18 years old be accompanied by their parents or legal guardians. Overnight guests are prohibited without prior approval of the local commander. Commanders may restrict privileges of soldiers whose guests infringe on the privacy of or access to SQ facilities by bona fide occupants.

y. Promote and support single soldier participation in the Better Opportunities for Single Soldiers Program. Commanders will continue a marketing strategy to attract young soldiers to events and facilities sponsored by morale, welfare, and recreation (MWR) (tours, athletics, recreational activities). The Community and Family Support Center, ODCSPER, HQDA, will pay \$4,000 for an implementation workshop and \$10,000 "seed" money to each BSB requesting this support. Requests must be made through the Community and Family Support Division, ODCSPER, HQ USAREUR/7A.

## SECTION II PROPOSALS

Where possible, commanders will-

a. Provide a separate personal storage area for soldiers to keep TA-50 gear and other items not regularly needed out of SQ rooms. Provisions for such storage will be included in renovation or new construction plans.

b. Provide and maintain one washer and dryer (commercial size) for every 10 soldiers. Washers and dryers will not be installed in latrines, but in suitably located laundry rooms that do not detract from billeting space. Dryers will be properly vented.

c. Establish creative, responsive, expanded, self-help programs, including providing sufficient paint to maintain high usage areas (such as hallways, kitchenettes, latrines). This action will be paid with ASG OMA funds.

d. Provide new or like-new coordinated room furnishing sets (drapes, couches, chairs, carpets) where possible. As part of renovation programs, commanders will consider providing modular room furnishings. This action will be paid with ASG OMA funds.

e. Work with MWR personnel to furnish television, reading, and gamerooms, and to provide SQ areas with bikeracks, picnic shelters, grills, and sports and exercise equipment. This action will be paid with ASG OMA funds or, if the commander provides written certification that appropriated funds are not available, with NAF funds.

f. Equip and staff gymnasiums based on local needs and USAREUR physical fitness center standards. Commanders will ensure gymnasium staffs do not charge fees to soldiers (married or single) to use the facility. This action will be paid with ASG OMA funds or, if the commander provides written certification that appropriated funds are not available, with NAF funds.

g. Put money into programs supported by and important to single soldiers (such as auto craftshops). This action will be paid with ASG MWR funds.

### **SECTION III HQ USAREUR/7A STAFF ACTIONS**

The HQ USAREUR/7A staff office shown in parentheses will-

a. Provide for single soldier focus awards (two \$50,000 awards) as part of the Army Community of Excellence Program (Office of the Deputy Chief of Staff, Resource Management).

b. Require that SSQOL policy and the videotape entitled "CINCUSAREUR on Single Soldier Initiatives" be included in the school of standards program of instruction (Office of the Deputy Chief, of Staff, Operations; and Office of the Deputy Chief of Staff, Personnel).

c. Develop single soldier programs of instruction for company commander, first sergeant, and battalion or brigade commander or command sergeant major courses (Office of the Deputy Chief of Staff, Operations).